DEPARTMENT OF STATE

Washington, D.C. 20520

Section H

SECRET

March 18, 1974

NSC-D/LOS #84

NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA

MEMORANDUM

TO: Members of the LOS Executive Group

SUBJECT: LOS Conference Instructions

Attached is the final draft of the proposed Instructions. Any additional Task Force suggestions on the draft are requested by COB Wednesday, March 20. Formal agency comments will be requested when the proposed Instructions are circulated to the Under Secretaries Committee.

I will shortly be circulating for your suggestions a draft covering memorandum to the Chairman of the Under Secretaries Committee summarizing the proposed Instructions.

John Norton Moore
Chairman

Attachment

State Dept. review completed

NSC review(s) completed.

SECRET

MORI/CDF
pages 4-194

MEMORANDUM

TO: The Deputy Secretary and Chairman, the NSC Under Secretaries Committe

FROM: John Norton Moore, Chairman, the NSC Interagency Task Force on the Law of the Sea

SUBJECT: Law of the Sea Conference Instructions

Pursuant to NSDM 240 of December 3, 1973, the Chairman, NSC Under Secreatries Committee is requested to forward, for consideration by the President, recommended instructions for the US Delegation to the Law of the Sea Conference. The first substantive session is scheduled for Caracas from June 20 to August 29, 1974. New instructions can be most effectively implemented if they are approved well in advance of the Conference, in order to permit pre-Conference consultations and negotiations with other government. Accordingly, it would be most helpful to the Delegation to have approved instructions by March 30, 1974.

Pursuant to NSDM 225 of July 16, 1973, a comprehensive review of US economic policy interests relating to the law of the sea negotiations has been undertaken by the NSC Interagency Task Force on the Law of the Sea, and the findings of that review are taken into consideration in these recommended instructions together with other important aspects of the US Law of the Sea position, including political, strategic, environmental, and scientific interests.

A summary of existing substantive positions and negotiating authority is attached at Tab A. This report contains recommendations for changes or additions thereto. Accordingly instructions issued pursuant to this report, together with those portions of earlier instruction not superceded, would constitute our instructions for the Conference.

It is recognized that a large number of detailed substantive matters will need to be addressed by the Conference. This paper deals with major issues, particularly where there are differences of opinion. On other matters it is contemplated that the delegation would, as in the past, be able to make substantive and textual refinements in the US position consistent with our instructions.

A copy of the report on the organizational session of the Law of the Sea Conference, held in New York from December 3-15, 1973, is attached at Tab B.

A. General Objectives

(1) Background of the Third United Nations Conference on the Law of the Sea

The present legal regime for the oceans is largely embodied in the four 1958 Geneva Conventions concluded at the First United Nations Conference on the Law of the Sea as supplemented by customary international law and a network of bilateral and limited multilateral fisheries and pollution control agreements. This legal regime is inadequate and is likely to become increasingly so in the absence of a new comprehensive oceans law regime. There are at least three major reasons for the inadequate nature of the present legal regime. First, the 1958 Conference failed to agree on the breadth of the territorial sea, a failure repeated at the Second United Nations Conference on the Law of the Sea held at Geneva in 1960. Second, the present legal regime is increasingly being challenged by the large number of new states which have become independent since World War II. At the time of the formation of the U.N. system there were only about 50 independent states. Today this number has tripled to approximately 150, most of which became members of the U.N. after the First and Second U.N. Conferences on the Law of the Sea. These states have made increasingly insistent claims to participate in the formation of a new oceans law. Many are not signatories of the Geneva Conventions

and have felt free to make broad unilateral claims which in many cases have been damaging to U.S. interests and in violation of international law. This tendency of the newer states to make sweeping unilateral claims has been reinforced by their strong concern for the problems of developing countries and their frequently one-sided dependence on a particular ocean use such as fisheries. Third, there has been an intensification of old ocean uses and development of new uses and problems largely associated with an increasing demand for ocean resources, global modernization, and a burgeoning ocean technology. The dramatically increased pressure on fisheries during the last decade is an example of this intensification with respect to a traditional ocean use. Similarly, it is now evident that there must be adequate protection for the ocean environment and that the capacity of the ocean to absorb pollution is not unlimited. And with respect to development of new ocean uses, the rapidly developing deep seabed mining industry provides a paradigm example. In all three cases the U.S. is directly and adversely affected by the lack of a satisfactory agreed international legal regime.

In areas in which there have been major differences in ocean law, for example problems associated with fishery differences between the United States and Chile, Ecuador, and Peru, or navigational disputes between the U.S. and

Canada and Indonesia, it has generally been evaluated as politically inexpedient for the U.S. to protect its interests by the use of force. In the highly interdependent world in which we now live this is likely to continue to be the case except for the most serious of threats affecting vital national interests. It is also likely that all of the factors making for a breakdown of the present legal regime for the oceans will continue or intensify in years ahead in the absence of widespread agreement on a new comprehensive legal regime. In fact, should there be a breakdown in current efforts to reach agreement, the expectations raised throughout the world and the political attention focused on the issue are likely to accelerate the trend to unilateralism in the oceans. The combination of increased unilateralism and persistent U.S. unwillingness to protect its interests against such unilateralism off foreign nations would be highly unsatisfactory for protecting U.S. ocean interests and for promoting a sensible overall ocean regime in the common interest of all nations. Moreover, it is likely that the U.S. itself would extend its jurisdiction unilaterally as evidenced by the 200 mile Fishery bills currently pending in both Houses of the Congress. Such a unilateral extension by the U.S. could bring the U.S. into increasing conflict with foreign nations such as the U.S.S.R and Japan off our own shores and make it more difficult to protect our interests off foreign shores.

The Third United Nations Conference on the Law of the Sea takes place against a background of over five years of preparatory work within the United Nations system, preparatory work stimulated by the real problems surrounding the legal regime for the oceans. The last three years of this work took place within the formal setting of the U.N. Seabed Committee under a mandate charging it with preparing for a comprehensive Conference on the Law of the Sea. The United States participated in a leadership capacity in this preparatory work and the U.S. position at the Conference will be carefully appraised by other nations in light of the President's ocean policy statement of 1970, United States actions and statements during the preparatory phase, and Congressional resolutions and statements. As in all areas of U.S. foreign policy, the stability of the U.S. course and the credibility of U.S. words and actions are of the utmost importance.

(2) U.S. interests to be served by a comprehensive ocean law treaty

The United States has a variety of important interests which would be served by a comprehensive ocean law treaty and which should be sought at the Conference. Among them are the following:

(a) protection of navigation in the territorial sea and areas beyond, particularly the protection of freedom of navigation and overflight on the high seas and in areas

adjacent to the territorial sea which may be subject to coastal state resource jurisdiction;

(b) protection of unimpeded passage through and over straits used for international navigation;

(c) coastal state resource jurisdiction to explore and exploit the mineral resources of the adjacent continental margin areas;

(d) a fisheries regime which will place coastal and anadromous fisheries under coastal state management with at least preferential rights in the coastal state, which will place highly migratory species under regional or international management and which, to the extent consistent with these goals, will protect traditional fisheries;

(e) a stable legal regime for deep seabed mining which will ensure access by U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation;

(f) a jurisdictional basis for sound environmental protection of the world's oceans and appropriate legal obligations and procedures to protect the marine environment and the living resources of the oceans;

(g) a regime for marine scientific research which will encourage rather than discourage the conduct of research and the dissemination of results;

(h) a regime which will protect high seas uses including SOSUS which is a vital element in our arms control equation with the U.S.S.R.

(i) appropriate international standards applicable to coastal state resource jurisdiction which will promote efficient utilization and conservation of the resources and accommodation with other uses. These include:

1. for mineral resources of the coastal seabed economic area

(a) standards to protect other uses of the area, particularly to ensure no unreasonable interference with navigational or other high seas freedoms;

(b) minimum standards for protection of the marine environment; and

(c) protection of the integrity of agreements and investments made in the area;

2. for living resources

(a) standards to ensure adequate conservation of stocks and dependent species;

(b) standards to ensure full utilization of stocks up to the allowable catch; and

(c) standards to ensure some protection for traditional fisheries to the extent consistent with overall fishing goals.

(j) a widely accepted and reasonably definite legal regime coupled with adequate machinery for the compulsory settlement of disputes in order to minimize conflict and promote stability of expectations and adherence to treaty requirements.

(k) a regime which will protect the integrity of agreements and investment relating to the development of ocean resources;

(l) an agreement which will implement the concept of a common heritage by establishing an international legal regime in the common interest of all nations and by providing revenues for international community purposes, particularly assistance to developing nations;

(m) a regime which will establish exclusive coastal state rights and coastal state duties with respect to the construction, operation and use of deep water ports and other structures that affect coastal state economic interests beyond the territorial sea;

(n) an agreement which will prevent and remove, where consistent with overall U.S. objectives, present or future bilateral ocean use problems damaging to U.S. relations with particular countries, for example, fisheries disputes and archipelago problems; and

(o) a timely agreement which will promote these objectives at the earliest possible time.

With the possible exception of broadly extending U.S. resource jurisdiction over continental margin mineral resources and fish stocks, all of these objectives are endangered by a continuation of the present trend toward unilateral action and a breakdown in the existing legal regime for the oceans. And at least with respect to coastal fishery stocks, since the principal distant water fishing nations off the U.S. coast are Japan and the USSR and its allies, any effort by the U.S. to achieve a unilateral solution without their agreement could be quite costly even if this were the general trend worldwide. It would be possible to mine the resources of the deep seabed without an international agreement. But in this area as well a good international legal regime would provide greater certainty and predictability for investment than would a hodgepodge of national legislation and competing international claims. A good international legal regime would also provide greater protection for other ocean uses such as SOSUS.

(3) Some fundamental objectives

It is of course true that a treaty which institutionalizes a bad ocean regime may be worse than the present drift to unilateralism. Accordingly, it is imperative that the U.S. provide strong leadership toward a good ocean regime. It also follows that the U.S. should not merely accept any treaty no matter what the substantive content. In this connection the U.S. Delegation has repeatedly made it clear

that the U.S. will not accept a treaty which does not protect unimpeded passage through and over international straits or which does not adequately protect navigational and other high seas freedoms in areas beyond the territorial sea. Similarly, it has been made clear that the U.S. will not accept a Treaty that does not protect U.S. basic resource interests and any deep seabed regime must provide for access by U.S. firms under reasonable conditions for exploitation of deep seabed mineral resources. The U.S. has also made clear the importance which it attaches to compulsory dispute settlement procedures and to an enduring Treaty which will be widely adhered to and respected.

The absence of a discussion above or statement by the Delegation that a particular interest is of great importance does not necessarily indicate that the interest is of lesser importance. For example, because of a strong trend in the negotiations toward substantially broadened coastal state resource jurisdiction as well as the probability that a balanced posture on resource issues will better promote all U.S. objectives, including U.S. resource objectives, the Delegation has not found it necessary to make similar statements with respect to ensuring coastal state control of continental margin mineral and coastal fishery resources. Another example is that for security and tactical reasons, we have avoided statements concerning our interest in the protection of SOSUS. Any final decision on the acceptability of an overall treaty must, of course, take into account

not only interests publicly stated to be vital to U.S. acceptance but also the overall accommodation of all U.S. objectives. Similarly, any such decisions should realistically compare the proposed resolution of a particular issue with the probable resolution of the issue in the absence of a comprehensive agreement. For example, it should be recognized in any such appraisal that the U.S. has little leverage to protect its distant water fisheries and that the trend absent agreement is for the erosion of such distant water fishing rights.

(4) Alternative and fallback strategies

The full range of U.S. oceans objectives can be best served by a timely and satisfactory comprehensive oceans law treaty. Bilateral and limited multilateral approaches, which have been the norm in recent years, have not adequately protected U.S. oceans interests. Many issues such as the breadth of the territorial sea require clear resolution if we are to achieve appropriate stability of expectations. A bilateral or multilateral approach, however, would require an agreement with a large number of states and the resulting politically and economically costly hodgepodge of relationships would be unsatisfactory. Other issues, such as the protection of coastal fisheries, may require agreement with states which have little incentive to agree except in an overall comprehensive oceans law settlement.

Similarly, a network of individual multilateral agreements on separate issues, perhaps following the 1958 model, would not adequately protect U.S. ocean interests. Important U.S. interests extend over a broad range of issues and a separate treaty approach risks excluding some of those issues. Such a separate approach would also provide less leverage to the U.S. on a number of important objectives, particularly U.S. navigational and coastal fishery objectives, than would a comprehensive single convention. Finally, separate treaties are likely to create a confusing pattern of legal relations between parties to the new conventions and the 1958 Geneva Conventions and could not as satisfactorily contribute to the needed stability of expectations and avoidance of conflict in oceans uses.

If, of course, it does not prove possible to conclude a timely and successful comprehensive oceans law treaty, the U.S. may wish to pursue alternative strategies for particular issues, at least until such time as a successful comprehensive treaty proves feasible. In this connection the U.S. has publicly stated that if agreement is not reached by the end of 1975 it will consider alternative national legislation as a means of providing a satisfactory investment climate and environmental regulation for U.S. firms interested in deep seabed mining. Similarly, we may need to examine alternative strategies for protection

of U.S. coastal fishery stocks if a timely agreement is not concluded. Protection of these or other U.S. interests, if in fact possible, would require agreement among interested and like-minded states if there were to be a complete failure of the Conference.

(5) The role of the Caracas session of the Conference

The United States should attempt to move the Caracas session as close as possible to explicit or implicit agreement compatible with our substantive interests. A timely Conference is important both because of U.S. fishery and deep seabed interests in timely agreement and because of the need to reach agreement before pressures for unilateral action overtake multilateral opportunities. As such, it is important that we approach Caracas prepared to reach final agreement. Informal talk of a 1976 session may be a self-fulfilling prophecy unless the U.S. takes vigorous action to promote negotiations in Caracas. In this respect our overall posture on all issues will be important in signaling to other nations whether Caracas will be a meaningful session. At the same time, it remains as important as ever to clearly communicate vital U.S. interests which must be accommodated if the Conference is to be successful. Few things would be more damaging than a failure of other nations to accurately perceive vital U.S. interests and the U.S. determination to protect those interests.

B. The Territorial Sea

It is widely accepted that a Law of the Sea treaty would include agreement on a twelve mile maximum limit for the territorial sea, assuming agreement on other issues such as straits and coastal state resource jurisdiction. The US objective is assuring agreement on the minimum possible breadth of the territorial sea. It is our assessment that agreement on a figure less than twelve miles is not possible.

The U.S. is opposed to reopening the regime of the territorial sea, including innocent passage, outside straits as defined in the 1958 Convention. There are a variety of ways of dealing with this issue, including general language, incorporation by reference to the 1958 Convention and international law to the extent not inconsistent with the new treaty, or express inclusion of the 1958 Convention language.

If a negotiation does occur on the question, we should work for a more favorable innocent passage regime.

In essence this consists of retaining as much as possible of the operational flexibility we enjoy under the present formulation, while at the same time restricting the opportunities for unfounded allegations of 'non-innocence' by coastal states. Negotiations leading toward an 'objectivized' innocent passage regime carry serious risks that the U.S. may be outvoted on politically motivated restrictions. Any list of prohibited

activities suggested for a new innocent passage regime would be subject to review and approval in Washington.

C. Straits

The straits negotiation is an unusually sensitive one that requires careful control both within the U.S. Delegation and in our negotiations with other delegations. In addition to the general guidance on conduct of negotiations, the contents of this section of the paper will not, directly or indirectly, be discussed outside the Executive Branch, irrespective of security clearance, except as specifically directed by the Chairman of the Delegation or the Chairman of the Task Force in consultation with the senior representatives of the agencies concerned.

Our major opponents on straits are Spain, Egypt, and other Arab States, Malaysia, Indonesia, the Philippines, and Tanzania. They are all supporting some type of regime described as innocent passage, but in many respects even more restrictive than the 1958 Convention on the T.S. and C.Z. While arguing the need for navigation safety and pollution control, and its fear of nuclear weapons, Spain appears to be seeking unrelated concessions such as NATO or EEC membership or British concessions on Gibraltar. Egypt and the Arab States seem principally concerned with the Strait of Tiran, although there is some evidence of Egyptian concern

over US military use of Bab-al-Mandab or Gibraltar, and some indication that this opposition may have been politically related to the US support for Israel. Malaysia is concerned about pollution in the Malacca Strait, but also desires notice for warship transit. Indonesia and the Philippines are principally concerned with the archipelago issue. Tanzania says its opposition is a matter of principle although it may also be concerned to some extent with its two straits in the Pemba and Zanzibar passages. There is active cooperation among many of the States on the straits issue.

We continue to believe that, as already authorized, we should work with States having straits interests similar to our own with a view to forming a broader common front. Accordingly the following general recommendation is made.

Recommendation

The US Delegation should be authorized, on specific approval of the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned, to indicate privately to the delegations of other countries having interests and objectives similar to those of the United States a willingness to negotiate with them draft treaty articles which would be mutually acceptable on straits transit. Any specific draft treaty language formulated in this manner would be subject to expeditious

review and approval in Washington prior to public or private support.

With respect to specific substantive issues, two separate types of problems are involved. First, the question of which straits must ultimately remain covered by a regime more liberal than innocent passage. Second, the nature of the regime. These will be examined in that order.

(1) Which straits are covered? The current US proposal applies a free transit regime to all straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state. It is exactly the same "definition" as appears in the 1958 Territorial Sea Convention article that prohibits the suspension of innocent passage.

As a matter of substance, the current or anticipated US interest in every strait is not the same; indeed it is impossible to predict the relative importance of a given strait in the future. For example, Gibraltar is of obviously vital importance while Messina (between Sicily and the Italian mainland) is of lesser importance. Some of the factors that affect the present and known future relative importance are: nature and extent of anticipated US use (insofar as this can be predicted); availability of a secure alternative route; cost of using an alternative route or ensuring favorable coastal state behavior; and tactical and strategic

considerations from possible loss of use. While the US might improve its ability to achieve its straits objectives if the applicability of the article were narrowed, the risk is that of encouraging everyone to seek special treatment.

Several countries have submitted straits transit proposals which exclude certain straits based upon specified criteria or combinations thereof. These proposals have obviously been advanced in efforts to obtain an exclusion for straits of particular concern to the countries advancing them or to enlist general support for the concept of unimpeded transit through and over international straits.

While it is unclear what sort of exclusion formula is negotiable, the greatest advantages of using such an approach, and the greatest risks, are tactical. At present, there is an increasing tendency by some developing countries to seek a compromise in terms of the substance of a straits regime. The US strategy is to isolate our principal opponents, particularly Spain, and to neutralize our LDC opponents such as Indonesia by attempting to resolve issues more important to them. The attempt to isolate Spain is based on our underlying assumption that we could not write a straits article at this time acceptable to both Spain and the United States. An exclusion approach offers the possibility of furthering that strategy with some countries while unifying support among countries having maritime interests similar to ours. On the other hand, discussion of exclusions can get out of hand, and must be dealt with very carefully. Accord-

ingly, we believe such discussion should take place only when it is determined, by the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned, that it would be advantageous to the achievement of our overall straits objectives.

The US would, of course, want free transit in the territorial waters of straits wider than twenty-four miles to the extent that the high seas route in the strait is not equally suitable.

West Germany has a unique problem regarding the entrance to the Baltic from West German ports near the GDR border. We will work with West Germany to ensure the route in question through GDR waters is interpreted to be a strait, but will avoid highlighting the issue during the negotiations.

The types of exclusions discussed below to some extent cover the same straits, (eg. the strait of Tiran is covered by two of the formulas). The discussion below accordingly refers to the precise situations in which authority regarding exclusions is authorized; the choice of formulas will be made within the scope of that authority on the basis of the tacital situation. The regime of non-suspendable innocent passage would apply in excluded straits, and coastal State construction standards for vessel-source pollution would not be permitted.

a) Exception for straits that are narrower than 6 miles or that do not connect two parts of the high seas.

An exception for straits six miles wide or narrower involves no change from the current US juridical position, and is acceptable if the current rule of nonsuspendable innocent passage continues to apply. Moreover, such an exception could gain complete support from those straits states (e.g., Italy)

which have indicated concern for their particular straits. Additionally, it might resolve the Greek concerns stemming from the treatment of all their waters as being subject to unimpeded transit.

The USSR straits proposal applies only to straits connecting two parts of the high seas, thus excluding the Strait of Tiran, the mouth of the Gulf of Fonseca (often considered "historic"), and the entrance to the Gulf of Honduras. The most politically significant of these, of course, is Tiran, which would also be excluded under a six-mile exception. There is a basis in customary law for making the distinction because there are currently no high seas in Tiran in anyone's view. More importantly, it offers the hope of reducing Arab opposition to free transit, since many Arab States themselves have an interest in free transit of other straits. Accordingly, we will continue to pursue means of excluding Tiran from free transit without prejudicing the application of the current rule of nonsuspendable innocent passage and in full coordination with our Middle East policy.

Recommendation

The US Delegation should be authorized, on specific approval of the Chairman of the Delegation in consultation

with the Chairman of the Task Force and senior representatives of the agencies concerned to indicate a willingness to accept certain specified modifications of substance which do not affect the critical elements of the US straits proposals. Such indication should initially be made privately to selected countries whose attitudes might be expected to be affected by such modifications. Should the reactions of these countries indicate that US negotiating efforts with respect to its straits objectives would be enhanced thereby, the delegation should be authorized to support one or both of the following modifications:

A continuation of the present international law regime of nonsuspendable innocent passage, as codified in the 1958 Convention on the Territorial Sea and Contiguous Zone, for passage through the territorial sea in those international straits which are:

--6 miles wide or narrower, or

--although wider than 6 miles, do not connect two parts of the high seas.

b) Islands off the coast

The Italian proposal refers to an exclusion for straits where a suitable alternative route is nearby, although in the context of a six-mile exclusion. The USSR, in its oral interventions, has implied a similar exception regardless of the width of a strait by consistently addressing itself to "major straits." They specifically referred to the straits off Tanzania, caused by the existence of islands; in such

cases there are high seas routes on the other side of the islands and accordingly the straits are not considered "major" by the USSR. It is our assessment that the islands situation may be responsible, at least in part, for opposition to free transit from Tanzania as well as other states such as Yugoslavia and the PRC, and for difficulties with US allies such as South Korea.

Recommendation

That the delegation be authorized, if the Chairman of the Chairman of the Task Force and the Delegation in consultation with the senior representatives of the agencies concerned determines after appropriate exploration that it would be advantageous to our straits negotiating objectives, to indicate support for the exclusion of straits formed by islands within 24 nautical miles of the coast of the same state where, and only to the extent that, a nearby and equally suitable high seas route is available on the seaward side of the islands. As with other exclusions, nonsuspendable innocent passage would continue to apply in the excluded straits. Because of ice and dangerous navigation conditions, the high seas routes to the north of certain Soviet offshore Arctic islands within 24 miles of the coast are not equally suitable. This exclusion would be drafted to ensure that such Soviet Arctic straits are not excluded and that our freedoms of the high seas and right of free transit in the Arctic north of the USSR are not affected. However, we will handle the Soviet issue quietly, as the USSR does not admit that the straits in question are used for international

navigation", or that there are high seas in the Arctic; accordingly, the USSR itself is unlikely to discuss the exclusion in the context of the Arctic because any such discussion would prejudice its Arctic sector position. Moreover, in connection with any such exclusion, at the appropriate time we would create a record regarding the straits covered by the exclusion.

(2) Substance of the regime in straits. The US has proposed that vessels and aircraft, in transit through and over international straits, enjoy the same freedom of navigation and overflight, for the purpose of transit, as they enjoy on the high seas. In all other respects, the status of the waters would be territorial and under the sovereignty of the coastal state. Our support for including all vessels and aircraft, military and commercial, in a straits transit regime continues unchanged.

The US Delegation should continue to insist on retention of the critical elements of the transit right required in straits (except to the extent the authority to exclude certain straits is exercised). These critical elements include unimpeded transit through and over international straits by surface vessels (including warships and tankers), submerged and surfaced submarines, and military aircraft without a requirement for notification to, or authorization from, the coastal state.

As a matter of substance, most states have at least commercial interests in free transit of straits similar to our own. On the other hand, developing countries are fearful of dissipating their negotiating strength by dividing among themselves, and thus may be unduly influenced by our opponents such as Indonesia and Malaysia. For our part, we must continue to make it clear that we cannot be expected to become a party

to a treaty that does not accommodate our straits objectives; we must persuade the majority that the substance of our position is reasonable, and that we have negotiated in good faith; we must try to accommodate the needs of as many straits states as possible; and we must build as wide support as possible for the essential elements of our proposals.

Recommendations

The US Delegation should continue to emphasize the critical elements of the US straits transit proposals while, at the same time, playing down and discouraging use of the term "free transit".These elements of the US proposals must continue to be presented as essential objectives of the United States but not necessarily in the specific formulation of the US draft straits article.

Consistent with the above recommendation and those relating to which straits are covered, the US Delegation should be prepared, on specific approval of the Chairman of the Delegation in consultation with the Chairman of the Task Force and senior representatives of agencies concerned, to negotiate privately with other countries draft treaty articles on straits transit which would be mutually acceptable. Any specific draft treaty language formulated in this manner would be subject to review and approval in Washington prior to public or private support.

These recommendations shall be carried out in accordance with the following instructions on specific items.

(a) Submarines

Our assessment is that most of the opposition to submerged transit is psychological and political. However, some straits are very shallow, and would be hazardous for submerged navigation, raising the danger of collision between a submerged submarine and a surface vessel. We have, of course, pointed out that it is hardly in the interests of a commander of a submerged submarine to risk collision.

Since the question of shallowness has only been raised regarding the Danish Straits and the Malacca Straits, we believe the best way to handle the issue if it continues to be a problem is to give private assurances to states bordering those straits that we do not and will not navigate submerged there because it is clear that this cannot be done safely, and if necessary and appropriate, we will suggest to the Soviets and certain US allies that they give similar private assurances.

A further objection to submerged transit relates to the coastal State's desire to know of submerged transit by a submarine and its identity. This question has been pressed by Indonesia in connection with archipelagic waters, and will be addressed in that context.

(b) The problem of coastal state security

The US-proposed articles have no provisions dealing with coastal state security. The straits states deal with this problem by the use of "innocent passage." The problem with the requirement that passage be innocent is not that of substantive compliance by the flag State but rather that the

coastal state may claim the right to arbitrarily stop passage on the grounds that it is not innocent, or can adopt regulations designed to ensure innocence. The original International Law Commission draft for the 1958 LOS Conference provided a more objective test, namely that passage is innocent so long as the ship does not use the territorial sea to commit acts prejudicial to the peace, good order, or security of the coastal state. The US--concerned about Soviet activities off its coast--supported the change in 1958 to the more subjective criterion that passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal state.

The Japanese have privately suggested reviving the International Law Commission approach. We could accept a general flag state obligation based on that approach.

The Soviet approach, publicly introduced, and supported by the UK in a privately circulated proposal, is to place obligations on the flag state to avoid specific actions--such as conducting maneuvers, launching aircraft, etc. Thus, while the coastal state has recourse against the flag state, the vessel's right of transit itself is not subject to interference. We believe the concept of general flag state obligations is helpful, but that the Soviet approach of a detailed list of prohibited activities raises serious negotiating dangers, (eg. regarding attempts to add nuclear weapons or other unacceptable limitations to the prohibitions). We are working with the

USSR and the UK to develop a mutually acceptable straits article, for which we intend to seek NATO, EEC, and other support, in which the concept of general flag state obligations is the key element.

Conceptually, most if not all of the concerns regarding "innocence" relate to actions that are not in fact "transit." The US-proposed right applies to vessels and aircraft "in transit...for the purposes of transit." We have made it clear that we are only seeking a transit right, not a right to conduct any other activities. A reasonable interpretation of our article and our own statements in fact prohibits most if not all of the activities on the Soviet list. Since we in fact have explained our article as if the transit right exists "only" for the purposes of transit, we should be able to accept flag state obligations at least generally.

Another step would be to meet psychological concerns regarding security by a reference to the UN Charter. Since UN Charter obligations apply irrespective of what a Law of the Sea treaty may say, this approach involves no new legal obligations on our part. Several formulas are possible. (None of these formulas would affect the right of individual and collective self-defense under the Charter.)

c) Regulation

i) Safety of navigation

There is enormous, and constantly increasing traffic through the major straits of the world. As a major maritime nation, the US has as much of an interest in ensuring traffic safety as do the states bordering straits.

Because of the dramatically increasing volume of shipping, and the size of ships, there have been increased international efforts to regulate traffic in heavily used sealanes, including straits. IMCO has established traffic separation schemes, which we have already proposed be made mandatory by the LOS treaty. As traffic increases, more sophisticated vessel traffic control systems in straits analagous to air traffic control systems may become necessary, and are already being discussed. The fact that a ship captain does not desire a collision does not obviate the need for rules and traffic control in a strait any more than it does on a highway or in the air.

The key questions are: What additional regulations beyond those already existing are necessary and desirable, and who should make them?

From the US perspective, we are far better off if regulations are made internationally. This permits us to participate in making them, and reduces the chances

for coastal state arbitrariness (even assuming a prohibition on discrimination in form or in fact by the coastal state). It also permits us to obtain necessary warship exemptions in the regulations themselves, rather than seeking a blanket exemption which would be difficult to justify.

Straits states, particularly Malaysia and Indonesia, are strongly pressing for coastal state regulation. The reasons are partly political (regulatory powers are inherent in "sovereignty" in the territorial sea) and partly substantive: the international process can be slow and difficult, and may not in their view adequately protect coastal state interests.

The U.K. -- itself both a maritime and straits state -- suggested an interesting solution in the safety and pollution context largely designed to meet the political problem. Stated generally, the idea is that coastal states would implement the international regulations. This idea might be elaborated in terms of a coastal state right and duty. The proposal would be that a vessel traffic control system for an international strait could be designed by the coastal states, in consultation

with the major user states, and then submitted to the Inter-Governmental Maritime Consultative Organization (IMCO) for approval. The coastal states would then have the right and obligation to implement the system if approved by IMCO. The major user states would be obligated, if requested by the coastal states, to agree with the coastal states on an equitable method of joint financing for the IMCO approved system, preferably in line with general cost-sharing guidelines provided by IMCO. The costs would include buoys, lights, other navigational aids, dredging, etc. This approach would have the distinct advantage of placing the financing obligation on the flag state rather than on individual vessels, thus undercutting a still nascent and undesirable trend toward the idea of individual vessel tolls "for services" in straits, an idea that unfortunately is not completely without precedent in canals, ports and the territorial sea. It also gives us and other users a strong basis for involvement in the design, development, and implementation of any coastal state system. There is precedent for such arrangements in the case of the Red Sea lights north of Bab al Mandab which are administered by the UK through a fund constituted by several user states; we and Japan favor an international cost-sharing system for Malacca. Of course, as a practical matter, the coastal state would have a major role in implementing any vessel traffic control system in any event.

Some developing straits states, and perhaps more importantly developing countries generally, should regard the proposal as quite forthcoming. Indonesia, one of the most sophisticated straits states, could be expected to discern our real objective of participation in control, and accordingly object. It is possible that the development implications for Lombok and Sunda straits might soften the Indonesian position somewhat. Finally, and by no means least importantly, because this approach parallels the Japanese strategy in the Malacca Straits, and appears forthcoming to the developing countries, it would be helpful in bringing Japan into a more active role of support of our straits position than has thus far been the case.

Recommendation:

In sum, we recommend that the Chairman of the delegation, in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned, be authorized to support a system whereby the coastal state could design a surface traffic control system for international straits which should be implemented only after approval by IMCO, and that, further, major user States would be obligated to agree with straits states on an equitable method of joint financing for such systems.

ii) Pollution

The U.S. is in a difficult negotiating situation on pollution regulation in straits. The underlying basis for our straits proposal is that the high seas between 3 and 12 miles from the coast would be eliminated. However, the U.S. currently asserts pollution control jurisdiction over ships to the 12-mile limit of our contiguous zone. Thus, at this moment, our own legislation could be cited as the precedent for coastal state pollution regulation in precisely those straits where we are seeking free transit.

Nevertheless, consistent with the purposes of free transit, we believe we are justified in seeking the same regime for vessel-source pollution in the territorial sea in straits as on the high seas adjacent to the territorial sea in those straits. As a practical matter, it is useless to seek lesser coastal state rights in straits than the coastal state enjoys in the high seas areas beyond. Accordingly, our position on coastal state rights with respect to pollution control standards in straits will be the same as that approved for high seas areas adjacent to a 12-mile territorial sea. Both the standards and enforcement aspects of this matter are addressed in a subsequent section of this paper.

d) Overflight

Historcially, vessels have had an international legal right to pass through the territorial sea without coastal state consent, and this right cannot be suspended in straits. Overflight of the territorial sea, however, requires consent. Thus, while states claiming more than a 3-mile territorial sea can regard the negotiation on vessels as one of defining the parameters of a right unquestioned in principle, they are less likely to regard the overflight negotiation in the same way. The U.S. has based its overflight rights on high seas rights in areas beyond three miles. However, the USSR, and possibly France, assert historic rights to transit certain straits . (It is unclear whether France applies this to aircraft.)The U.S. has not opposed this assertion and it may be advantageous for us to begin to espouse this concept as well

Our straits overflight problem relates mainly to military overflight. Much of the concern regarding aircraft may be psychological, perhaps because they are capable of penetrating the air space over land at high speeds. Some of our opponents have pointed out that the U.S. itself has established an Air Defense Identification Zone extending far out to sea in which all civil aircraft flying toward the U.S. must identify themselves, although the establishment of entry conditions is lawful under the Convention on International Civil Aviation.

It is argued that the chances of an accident affecting the coastal state increase as the aircraft gets closer to land. Our straits proposal applies to civil aircraft as well as military aircraft, and requires that civil aircraft respect ICAO standards. However, under the US proposal, state, (including military) aircraft, to which ICAO standards are not always applicable, will normally respect those standards while in transit and will, at all times, operate with due regard for the safety of navigation of civil aircraft. (The "due regard" obligation is included in the ICAO Convention, to which the U.S. is a party.) A state would be strictly liable for damages caused by failure of its state (including military) aircraft to abide by the regulations.

A major concern and overflight problem is access to the mediterranean through the Strait of Gibraltar. Under certain circumstances, such as the resupply of Israel, nuclear overflights, and other flights which require secrecy, routes over land are not available. During the recent Middle East War, Spain denied us overflight of its territory and also sent us a note questioning our overflight of the strait of Gibraltar.

The US has a fundamental security interest in maintaining its ability to overfly a number of other straits, and the maintenance of secrecy of overflight may in some instances be an essential ingredient of the US operational objectives. In such instances, the filing of routine flight plans, initiation of communications with air traffic control, position reporting, and restrictions on altitude, speed, cargo, and similar matters would be tantamount to a degree of control which could delay or interfere with the military objective and defeat the requirement for secrecy.

On the other hand, a basic aspect of air traffic control is communications with ground controllers. The Soviet (and private UK) straits articles provide for on-the-spot radio communications with the ground. They do not call for advance notification, such as the usual filing of a flight plan.

We are very reluctant to agree to a communications requirement for state aircraft because of the problem of secret overflights. Secrecy is not a basic part of the normal operations of most military flights which--in the vicinity of a strait--could be picked up on radar. A majority of operational overflight needs do not require secrecy, although sensitive operations do, and indeed military aircraft usually comply fully with air traffic control regulations. Since we believe overflight rights are probably not attainable without additional accommodation on air traffic safety issues, we should at the appropirate time be prepared to accept a requirement of monitoring certain published frequencies

for the purpose of receiving ground communications on safety matters.

Recommendation:

If the Chairman of the Delegation, in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned, determines that further substantive flexibility is needed, the Delegation is authorized to accept a duty for state aircraft to respond while in the strait to ground communications from the appropriate international air traffic controller on applicable international frequencies for the purpose of verifying course, speed and altitude .

Information regarding origin or destination outside the strait is not necessary for safety purposes and would not be required under this approach. Moreover, the right of transit would not depend on communication, which would be a completely independent obligation. There is no obligation to obey air traffic control instructions nor is there any change in our instructions regarding air traffic safety, including the duty to operate with due regard for the safety of navigation of civil aircraft. In the unusual case where secrecy or radio silence are necessary, we may in some instances be able to justify this on grounds of reasonable self-defense precaution.

e) Liability

The underlying U.S. approach to traffic safety and pollution in straits is that it is preferable to be liable to the coastal state for damage caused by an accident during transit than to give the coastal state broad regulatory authority, or to accept too many international restrictions regarding traffic safety, pollution, and similar matters. We have already proposed strict liability with respect to damages resulting from failure to adhere to IMCO traffic separation schemes and ICAO air traffic regulations. If liability is only incurred when a regulation is violated, we are to some extent encouraging more regulation than may be necessary. Moreover, there is no reason why the coastal state should bear any burden regarding damage it suffers from activities which -- in a fundamental sense -- it cannot and should not control. If two or more vessels or aircraft are involved, damages could be apportioned between them. We should, however, be careful that forthcoming liability provisions are tactically sound in attracting more coastal state support without losing maritime state support.

i. State aircraft and government non-commercial ships (including warships)

The flag State is of course already liable for damages caused by government non-commercial vessels and state aircraft. Moreover, for political and security reasons, we have consistently taken a liberal approach on this matter when an accident occurs. Furthermore, these vessels and aircraft enjoy immunity from coastal State arrest, and we do not want them to be subject to certain regulations (e.g., pollution). Accordingly, the assumption of strict liability is unlikely in practice to make a significant difference, and could significantly enhance our negotiation posture. It will also provide us with a strong argument that the remedy against our warships for violating the regulations is flag state liability in the event of damage, not coastal state interference with transit.

Recommendation: That we be authorized to support liability up to and including a rule that the flag state be subject to strict liability for personal injury or property damage to the coastal State or its inhabitants caused by an act of or accident involving a vessel or aircraft entitled to sovereign immunity under international law while exercising the right of transit in the strait.

ii. Commercial vessels and aircraft

Although the fear of supertankers is substantial, the problem is not as great because commercial vessels and aircraft, and their owners and operators, are subject to suit in national courts. Moreover, liability for pollution damage from commercial vessels--the greatest concern--is already the subject of international agreements. Nevertheless, it could be very helpful to deal with this problem in a strait article. Since several developing countries have large or growing fleets, we do not believe the negotiation of this issue is likely to have very substantial risk; accordingly the U.S. can afford to appear forthcoming. In any case, many petroleum companies have established one-tanker corporations intented to limit the possible amount of liability. In fact, in both the commercial navigation and civil aviation fields, the U.S. has been far in advance of others on this question.

Recommendations:

1) That we be authorized to support, if necessary, liability of the owner or operator up to and including a rule that the owner or operator of a commercial vessel or aircraft is subject to strict liability (strict liability would be defined as in the 1969 Convention on Civil Liability for Oil Pollution Damage) for personal injury or property damage to the coastal State or its inhabitants caused by an act of or accident involving the vessel

or aircraft while exercising the right of transit in the strait.

2) That we will be authorized to support flag state responsibility to require that its flag vessels have insurance or other financial security to ensure their financial responsibility in accordance with generally accepted international standards (e.g., the insurance requirements of the 1969 Convention on Civil Liabiltiy for Oil Pollution Damage).

We will consult in advance with US industry and the maritime countries before taking a public stand on these questions.

As in pollution questions, we should also provide for quick release of non-military vessels under a bonding procedure.

iii. Coastal State Liability

In addition to quick release and bonding requirements, other protection should be provided against possible arbitrary coastal state action. Consequently, we should propose, in conjunction with coastal state rights in straits, that the coastal state be liable for violations of the treaty, including unreasonable actions taken in implementation of its treaty rights.

D. ARCHIPELAGOS

Archipelago claimants have become a complicating factor in the negotiations disproportionate to their number or world power base. They have formed a coalition with hard-line straits states (although the issues are disparate) and have obtained support on an ideological basis from blocks such as the OAU, even though most of the supporters have no real parallel interests. The archipelago issue is interferring with progress in other areas of the negotiations to the extent that the other members of the Group of 5 are strongly urging us to take steps to resolve the issue. Efforts of members of that group have been less than helpful. The UK has tabled archipelago articles, and the USSR has made statements sympathetic to the claimants. We believe that our ability to prevent this issue from further disrupting our ability to achieve our overall objectives will be in large measure determined by the perception of archipelago supporters of the reasonableness of our efforts to reach an accommodation.

(1) The problem of an accommodation.

a. The claimants. Archipelago claims have been presented in the Seabeds Committee by Indonesia, Philippines, Fiji, and Maritius. The Bahamas and our own Trust Territory are also seeking archipelago status. The resource interests of these claimants

could be effectively satisfied by whatever economic zone is finally developed by the Conference, and at least some of the claimants might be content with merely a resource regime. The Philippines and Indonesia, however, have a political interest in achieving recognition of a "concept," and Indonesia, in particular, has perceived security interests in achieving control of navigation. They seek this control purportedly because of the threat of infiltration and subversion. Thus, any proposed solution must address these political and security considerations.

b. Risks. A major difficulty from the US perspective is that any conceivable accommodation which would satisfy the major claimants would require us to relinquish the right to many high-seas navigational and other uses. As a practical matter, this means that we would lose the right to conduct operations in the areas which would become archipelagic waters. This is not merely a loss of space to conduct training exercises. At best, it creates vast areas which would be "off limits" to us which would be available as havens for submarines of the USSR or any other power which might clandestinely violate the treaty. A worse result is the potential for agreement between an archipelago state and a power unfriendly

to us for the use of such waters for tactical or strategic purposes. In addition, we would almost certainly lose the right to conduct scientific research in archipelagic waters. Finally, efforts to negotiate on the issue carry some risk of rendering us vulnerable to weakening our juridical position on high seas and straits issues in general.

2. Possibilities for Accommodation.

If we can remove or minimize the exacerbation of the archipelago controversy from the negotiations, and at the same time advance our efforts towards achieving our straits and other navigational objectives, both for military and commercial vessels and aircraft, we can accept a certain amount of the risks involved. On balance, we believe it is in our interests to intensify our exploratory efforts to determine whether or not it is possible to reach a solution which will be acceptable to the claimants, while preserving a sufficient quantam of usage rights for military and commercial vessels(including tankers) and aircraft to meet our minimal requirements. We view Indonesia as the key to any possible solution, and would initially concentrate our efforts there. At the same time we recognize that no accommodation may be possible with the Philippines, regardless of the outcome of our efforts with Indonesia.

RECOMMENDATION

That the delegation intensify exploratory efforts to determine whether a solution embodying the following points is possible:

(1) An archipelago concept could be applied only by island states; not by States with both island and continental territory.

(2) Lines designed to delimit the area of "archipelagic waters" could be drawn from land point to land point. These lines may be called "archipelagic construction lines," or some term other than "baselines." Length of archipelagic construction lines may not exceed 90 (FB to 120) nautical miles.

(3) All waters enclosed by archipelagic construction lines would be "archipelagic waters." These waters are not, nor are they analogous to, internal waters, territorial sea, or economic zone. They are sui generis - unique.

(4) The maximum permissible ratio of water to land is 5 : 1. Waters in bays, reefs, rivers, atolls would be counted as land for determining the ratio.

(5) The archipelagic state would have exclusive jurisdiction over activities within the archipelagic waters other than overflight and navigation (navigation includes vessel-source pollution).

(6) The territorial sea - outside archipelagic construction lines - would be measured from land and any applicable baselines along it.

(7) We would prefer that any coastal zone beyond the territorial sea (e.g., an economic zone) agreed to in the treaty - outside archipelagic construction lines - be measured from the same land or baselines along it from which the territorial sea is measured. This may, however, cause a shelf boundary-delimitation problem for Indonesia. Accordingly, we could accept measurement of the economic zone outward from the construction lines.

(8) The navigational and overflight right to be confirmed in this part of the LOS Treaty is the right to transit the archipelago. (A term different from that used in connection with straits would be used to avoid confusion between the two concepts--e.g. archipelagic passage).

(9) Transiting vessels and aircraft shall utilize a route through or over archipelagic waters which reasonably conforms to their destination, outside the archipelago.

(10) Transit shall be accomplished without unreasonable delay. All vessels and aircraft in transit, however, may take such measures as are normal for their safety and self-defense.

(11) Vessels and aircraft entitled to sovereign immunity would be exempt from pollution standards and enforcement whether international or coastal. The archipelago state could not establish or enforce vessel construction standards. The archipelago state could establish and enforce

discharge and dumping standards in archipelagic waters, provided discrimination between ships of different nationalities (including ships of the archipelago state), and standards that have the practical effect of denying passage, are prohibited.

(12) The obligations of the transiting vessels and aircraft, and the archipelagic state, are mutual and reciprocal. Whereas the vessels and aircraft will transit without unreasonable delay, so too the archipelagic state shall not hamper the passage.

(13) There will be no notification of transit.

(14) Any willingness on our part to reach and support this accommodation is contingent on receiving active support for our straits and other navigational objectives from Indonesia both before and during the LOS Conference. Our ultimate acceptance of the concept will, of course, be upon the coming into force of a LOS treaty acceptable to us.

(15) Our preferred position is that the passage or transit area should not be limited further than as specified in the foregoing points, and we will attempt to obtain that result. If, however, it is necessary to accept some type of additional restriction on the passage area to achieve an overall resolution of the archipelago issue, we could accept a passage area (which might ultimately be called a corridor if tactically

advantageous) conforming to the sinuosity of the land areas, provided that the passage area is not restricted to less than 75% of the area between the nearest points of land, or 100 miles, whichever is lesser, of the waters between main islands; i.e., not drying rocks or shoals. Such transit areas must be constructed so as to include the maximum amount of navigable waters available, including all normal shipping channels. Transiting vessels and aircraft may depart from the passage area for the purpose of safety of life, self-defense, or as a result of force majeure, or in innocent passage as in the regime of the territorial sea.

3. Position in event of Failure of Accommodation.

A fair possibility exists that it may not be possible to reach an accommodation which will protect our minimal interests. If we should reach a point in our explorations where such an outcome becomes apparent, it will be necessary to adopt a different approach to protect our interests. We believe, nevertheless, that our exploratory efforts will have served a beneficial purpose in having demonstrated our reasonableness in seeking a solution, which we can cite as necessary in the negotiations.

RECOMMENDATION

Early in any exploratory discussions we will inform the archipelago claimant or claimants that a

failure to reach a mutually satisfactory accommodation will require us to negotiate in the Conference in a manner designed to protect our own interests; i.e., to seek to have no archipelago concept at all in the treaty, and in any event to refuse to accept any archipelago concept that is inimical to our navigation and security interests. We will make it clear that our offer is not necessarily a continuing one. In the case of Indonesia, we may advise that the preservation of our juridical position may involve a reconsideration of the informal notification procedures which we have been following. Our position in the ensuing Conference will be to isolate the claimants and achieve a treaty that is silent on the archipelago issue.

4. Additional Considerations.

To the extent that acceptance of our offer of accommodation would create security or other practical problems for Indonesia, we intend to explore potential practical means for helping Indonesia to deal with those problems.

5. The Problem of Cluster Archipelagos.

Our initial explorations will be limited to seeking accommodation with those states who qualify as a single-unit archipelago under the criteria set forth in this section. Should our efforts prove fruitful,

and should it further appear that our overall interests (including the maintenance of a limited definition of archipelagic waters) would be furthered by agreeing to accept extension of the concept to archipelago claimants who would be divided into clusters by its application, we will study the possible effects on our interests and give a recommendation.

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E. Coastal Resources and an Economic Zone

The large majority of coastal nations, including a number of developed coastal nations, favor broad coastal state economic jurisdiction over living and mineral resources beyond a 12-mile territorial sea, extending at least 200 miles from shore. The major issues are coastal state jurisdiction beyond 200 miles over continental margin seabed resources and coastal and anadromous fisheries, an exception for tuna, limitations and standards governing the exercise of coastal state jurisdiction, including protection of non-resource uses, and compulsory dispute settlement procedures. We can support coastal state jurisdiction over resources in a 200-mile economic zone in the context of satisfactory resolution of these major issues and an overall satisfactory settlement.

A further issue of considerable importance concerns the rules applicable to delimitation of areas of coastal state jurisdiction between neighboring coastal states; this is a complex and contentious bilateral issue for many coastal states.

Moreover, although the issue arises largely in the context of delimitation between neighboring coastal states, questions have been raised as to whether small islands, particularly if uninhabited, should be entitled to the

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same broad economic jurisdiction (or even the same territorial sea) as other areas. In this regard, some African states have proposed excluding areas under foreign domination or control from economic zone provisions.

1. Seabed Resources of the Continental Margin

There is virtually no opposition to the idea that coastal state jurisdiction over seabed resources of the continental margin should be exclusive. While the U.S.S.R. has proposed a limit of 100 miles from shore or 500 meters depth, whichever is further seaward, most countries, including landlocked and shelflocked if their interests are accommodated, are prepared to support the idea that this jurisdiction should extend no less than 200 miles from shore.

Many Latin American countries, particularly those on the east coast, as well as Canada, the U.K., and New Zealand, believe coastal state jurisdiction should extend beyond 200 miles to the edge of the continental margin. Australia and the PRC also support this position, although at least with respect to the PRC, the problem probably is perceived essentially as one of bilateral delimitation with neighboring coastal states.

The African states do not support coastal state jurisdiction beyond 200 miles, although Nigeria and possibly others do not appear to have substantive objections to

the idea. Japan takes the same position as the African states, largely because of bilateral delimitation problems with the PRC. The landlocked and shelflocked countries -- many of which are African -- tend to favor the African position.

The original U.S. proposal for a coastal state trusteeship zone specified a limit embracing the entire continental margin. Since then, we have stated we could also accept an alternative distance limit. Our new Coastal Seabed Economic Area proposal does not specify a limit, but in introducing the articles we noted that the majority favored at least 200 miles, and that a substantial number of states favored including the continental margin beyond 200 miles. We went on to urge an accommodation of the interests of those favoring broader jurisdiction for the seabeds by providing for the interests of others through such devices as revenue sharing. In essence, the U.S. posture was one of seeking to facilitate widespread agreement by accommodating the interests of both sides in the context of coastal state jurisdiction over the continental margin beyond 200 miles. We did not indicate a direct U.S. interest in the substance of the issue.

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The following information on geographical areas has been compiled to assist in evaluating the positions that the US should take on the outer boundaries of the Coastal Seabed Economic Area. Such alternatives assume at least a 200-mile limit alone or in combination with an additional fixed depth, whichever is further seaward.

Outer Limit	U.S. Sq. Miles	% U.S. gains going beyond 200 miles	U.S. absolute gain in square nautical miles
1. 200 mi.	2,222,000	--	--
2. 200 mi. +200 meters	2,224,500	0.1%	2,500
3. 200 mi. +2500 meters	2,279,500	2.6%	57,600
4. 200 mi. +4000 meters	2,608,500	7.4%	386,500*

*Two long 4000 meter ridges extend across oceans that would raise serious problems of deep seabed allocations. One from the Azores to Guyana and another from Mexico to the Antarctic via French Polynesia.

Outer Limit	U.S. % of area if limit adopted world-wide	Countries Involved
1. 200 mi.	9.0%	--
2. 200 mi. +200 meters	8.8%	Argentina, Canada, Australia, US, USSR
3. 200 mi. +2500 meters	6.5%	**
4. 200 mi. +4000 meters	5.0%	***

**Argentina, Australia, Canada, USA, USSR, Chile, Ecuador, Iceland, India, Ireland, Madagascar, Mauritius, Norway, New Zealand, Pakistan (?) South Africa, South West Africa and United Kingdom

***Argentina, Australia, Canada, USA, USSR, Chile, Ecuador, Iceland, India, Ireland, Madagascar, Mauritius, Norway, New Zealand, Pakistan, South Africa, South West Africa, United Kingdom, Brazil, Costa Rica, El Salvador, France (Pacific), Guatemala, Indonesia, Mexico, Portugal, Peru, Sri Lanka, and Tanzania

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Outer Limit	Distribution of U.S. areas beyond 200 miles	
1. 200 mi.		
2. 200 mi. +200 meters	Arctic Ocean	97%
	Bering Sea	3%
3. 200 mi. +2500 meters	Arctic Ocean	94.53%
	Bering Sea	4.25%
	Other	1.22%
4. 200 mi. +4000 meters	Arctic Ocean	53.69%
	Bering Sea	17.41%
	Gulf of Alaska ****	8.90%
	Pacific Northwest****	19.02%
	Atlantic	.74%
	Gulf of Mexico	.02%

****Not highly prospective areas for hydrocarbons as mostly volcanic.

To the extent the U.S. interest in the continental margin beyond 200 miles relates to Arctic areas off Alaska, it is unclear what the actual effect on any general limit (200 miles or any other) will be in the Arctic. The reason for this is that virtually all Arctic States (other than the U.S.) including the USSR and Canada, either have claimed or would like to claim all of the Arctic north of their coast to the North Pole under a "sector principle." This Arctic issue has not been raised in the LOS negotiations, and we strongly suspect that most Arctic States will not regard any general maritime limits in an LOS treaty -- territorial sea or resource jurisdiction -- as precluding a sector claim in the Arctic. Accordingly,

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most Arctic States are likely to oppose any express attempt --before or after a treaty is negotiated--to regard any part of the Arctic seabed as international seabed area. The US is opposed to the sector theory for navigational reasons, but could join other Arctic States in an interpretation that extends resource jurisdiction in the Arctic to the North Pole should the need arise; this would eliminate the need to seek universal jurisdiction beyond 200 miles to cover the Arctic where almost all possible US areas with potential deep water hydrocarbons may lie.

Most of the deep water portions of the world's continental margins have not been investigated in any detail. Consequently there are widely varying estimates of the recoverable hydrocarbon potential and of the present value of deep water hydrocarbons. Political, technological and economic factors relevant to a policy analysis of what is in the overall interest of the US for an outer boundary for seabed resources are changing rapidly. We do know there is increasing commercial risk and dramatic increase in cost of extraction as water depth increases.

In spite of the speculative nature of the data, we have made some ballpark estimates of the hydrocarbon potential and value for various limits for the US beyond 200-miles based on the information available at this time. As the

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US continental margin is, on balance, roughly representative of the world-wide configuration, it may be assumed that the figures developed for the US margin would approximate the situation world-wide.

U.S. Continental Margin	Estimate of Added Hydrocarbon	Billion Barrels of Oil	Present Value
1. 200 mi.			
2. 200 mi. + 2500 meters	0.2%		
3. 200 mi. + 2500 meters	3.0%		
4. 200 mi. + 4000 meters	15.0%		

Several comments are necessary on the 200 mile plus 4000 meter outer boundary. The first point is that all figures for this area are particularly untrustworthy because the data base is extremely unreliable. Secondly, volcanic areas aside, the possible US areas between 2500 and 4000 meters that may have some hydrocarbon potential are largely located under thick ice in the Arctic. An Arctic Sector Theory would encompass this region for the U.S. and avoid the problem of the immense 4000 meter ridges that run across the South Atlantic and South Pacific basins. Development of Arctic hydrocarbons also raises unique environmental and operating problems that suggest that it would require a huge discovery to overcome inherent political and economic constraints to justify exploitation.

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Under existing law coastal states have exclusive rights to seabed resources out to the 200-meter water depth and beyond that to adjacent areas that admit of exploitation. Most coastal states now want to establish a precise outer limit of 200-miles although a few influential broad shelf states want jurisdiction beyond 200-miles to the edge of the continental margin. Most landlocked and shelflocked states will probably recognize a 200-mile limit in the Treaty and probably coastal state control beyond if some revenue sharing provisions are included in the Treaty. The precise modalities of the accommodation would have to be worked out in the negotiation.

There are costs and benefits to the US from international recognition in the Treaty of coastal state seabed resource jurisdiction out to 200-miles or beyond. The basic cost to the US will be the possible loss of access, or a sharp increase in the cost of access (since we have no control of coastal state fees, but could participate in fixing international fees) to the 85% percent of the potential continental margin hydrocarbon resources off other nations. We also have no control over concerted attempts to cut production or use resources for political purposes. It is likely that US companies with their lead in deepwater hydrocarbon extraction technology would benefit the most from nondiscriminatory access to deep water areas which cannot be assured if the areas are under coastal state

control. Even assuming a less than optimum international regime, because of its technology, the US would have access to a disproportionately high percentage of an international area for exploitation. We also run a greater risk of coastal state interference with our nonresource uses such as navigation, marine pollution and scientific research, since other states would control 92% of the world's continental margins.

The basic benefit to the US from coastal state seabed resource jurisdiction to at least 200-miles is that the U.S. would acquire undisputed control over 15% of the estimated world's continental margin hydrocarbon potential covering 8% of the world's continental margins. We do not run the risk of dealing with an international arrangement although we recognize that our projected energy needs are such that we will have to deal with a variety of individual or blocs of coastal states for offshore hydrocarbons . The above factors and various costs and benefits lead to several conclusions regarding the policies the U.S. should adopt on the outer limit of the Coastal Seabed Economic Area.

First the U.S. should not oppose coastal state jurisdiction beyond 200 miles. The practicalities of the negotiation are that an overall settlement will probably require an accommodation with the strongly held position of other broad-shelf states.

Second, even within 200 miles, the US is not proposing coastal state jurisdiction without accommodation of the interests of landlocked, shelflocked, and other geographically disadvantaged states through revenue sharing, or without other international obligations of the coastal state. Consistent with this position, we believe the U.S. should not support coastal state jurisdiction over the continental margin beyond 200 miles unless it is subject to at least the same treaty limitations that apply within 200 miles.

The question therefore is the degree of coastal state control over continental margin resources beyond 200 miles. The balance of our economic interests on this matter is not completely clear. We would like the resources to be available to U.S. consumers. However, the effect of exclusive coastal state jurisdiction off our own coast is to prevent access for our companies off foreign coasts without foreign state consent. A uniform 200 mile limit would cover over one-third of the world's ocean floor and while the U.S. gets more area with 200 miles than any other state, beyond 200 miles a number of states have considerably broader and shallower continental margins off their coasts than we do.

Australian and Canadian representatives urged us in December to avoid taking a position on this issue, while relying on our global interests in widespread agreement as the basis for encouraging a "favorable" compromise. Tactically, the issue is a delicate one. Under certain circumstances discussion of U.S. substantive interests in jurisdiction over the margin beyond 200 miles could stimulate support for limiting jurisdiction to 200-miles. Accordingly, while negotiating privately on the issue, we believe we should generally indicate our interest in seeing relevant interests accommodated (playing an honest broker role) and should not (except as directed by Head of the Delegation in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned) discuss the US interest in its continental margin beyond 200 miles with the public or foreign representatives. We will simultaneously explain privately to interested members of Congress why evidence of domestic insistence on the issue could be counter-productive.

Pending resolution of the issue, we will not take any position inconsistent with the adoption of an Arctic Sector resource solution to protect our potential interest in acquiring control over Arctic continental margin regions beyond 200 miles with hydrocarbon possibilities.

As indicated in earlier instructions, a precise limit of coastal state jurisdiction over the continental margin beyond 200 miles will have to be established to define any such jurisdiction. The U.S. proposal to use a gradient figure was widely regarded as too complex. While not entirely accurate in a geological sense, a depth-of-water figure is likely to be the simpliest to negotiate and to find. Figures beyond 200-miles will be studied by the NSC Interagency Task Force with a view to arriving before Caracas at a precise limit that maximizes the hydrocarbon and mineral resource potential off our coast without extending unreasonably far elsewhere.

RECOMMENDATION:

1) The US delegation should not oppose proponents of a 200 mile limit, proponents of a margin limit beyond 200 miles or proponents of an intermediate zone beyond 200 miles, but should seek to establish a role of honest broker on the issue.

2) The US delegation should take no position inconsistent with coastal state jurisdiction over Arctic seabed resources extending into the North Pole under a sector approach limited to resource jurisdiction.

3) Precise figures for defining any continental margin limits beyond 200 miles will be developed.

With respect to the substance of coastal state seabed jurisdiction beyond the teritorial sea, our view is that the coastal state rights under the treaty should be limited to

exclusive jurisdiction over exploration and exploitation of seabed resources, deep drilling for any purpose, and off-shore installations affecting its economic interests (e.g, super-ports). Other activities would be governed by high seas principles. Scientific research is specifically dealt with later in the paper.

The international limitations on coastal state behavior that we have proposed in our Coastal Seabed Economic Area Articles would continue to be supported, as would compulsory dispute settlement:

--1) In order to assure an adequate accommodation of uses, and to prevent resource jurisdiction being used as a basis for unjustifiably interfering with navigation and other uses, the coastal states would be obliged to prevent unjustifiable interference with other uses, and to ensure compliance with specific international standards in this regard (e.g., regarding maritime safety standards and the breadth of safety zones). Conversely, other uses would have to be conducted in accordance with a general obligation of reasonable regard for coastal state rights under the Treaty. For example, other users would have to respect the safety zones around installations established under the Treaty.

2) The coastal state would ensure compliance with international standards, and could apply higher standards to prevent pollution from resource activities, drilling and fixed installations over which it has exclusive rights under the Treaty .

3) The coastal state would be obliged to protect the integrity of foreign resource investment.

While the relative difficulty of achieving agreement on each of these points varies, we believe the chances of achieving agreement on the first substantive point are good. The practical value of any of these measures depends largely on agreement on compulsory dispute settlement.

Revenue sharing aside, which is discussed below, we believe the U.S. interests are best served, and the negotiations simplified, if the standards apply seaward from the territorial sea and we will seek that result. Nevertheless, we believe that with respect to the second and third limitations above, if necessary to achieve agreement on the standards, the Delegation should continue to have flexibility on the issue of whether these limitations are applicable seaward from the 12-mile limit of the territorial sea, or only seaward of the 200-meter depth curve where it is beyond 12 miles.

We have reached the conclusion that the rate of revenue sharing by coastal states in the area of coastal state resource jurisdiction should be uniform for all states and probably should be computed in the Treaty as a fixed percentage of the value of production at the wellhead in order to simplify its application under different economic systems. In this regard, there are five interrelated variables which determine the absolute amount of revenue and the relative shares among coastal states. The variables are: (1) the output potential of the revenue sharing area; (2) the revenue sharing rate; (3) the rate of hydrocarbon production; (4) the timing of production; and (5) the relative distribution of resources with respect to distance/depth and distribution of resources among coastal states. We believe the coastal state should be responsible for collecting and transfering any revenues. (For a discussion of the allocation of revenues, see pp. ___ under section ___.) Specific ranges are being developed now on the basis of the criteria specified in NSDM 62:

"...a level that will make a substantial contribution to development, render participation in the Treaty attractive to the necessary signatories, and at the same time encourage exploration and exploitation of the seabeds."

It should be noted that the attitudes of the coastal state majority, as well as that of the landlocked and shelflocked minority, are relevant to the second criterion.

There is disagreement about revenue sharing. Accordingly, three options are presented. In general terms they are: (1) no revenue sharing; (2) revenue sharing up to 1% starting at 12-miles; (3) revenue sharing up to 5% starting at greater of 12 miles or 200-meters (or functional equivalent). These options are followed by an additional option, consistent with options 2 and 3 above, for revenue sharing beyond 200 miles at a higher rate than landward of 200-miles.

Option 1. The U.S. should withdraw its present support for revenue sharing with respect to any area of coastal state seabed jurisdiction.

Pros:

1) Revenue sharing, even at modest rates, involves large sums that would increase through time. There would be an undesirable drain on tax revenues and an adverse effect on the U.S. balance of payments position.

2) Any form of revenue sharing will face the problem of verifying that a coastal state has actually complied with its royalty payment obligations. There will be temptations to cheat on a common definition of the term "value of production," and the U.S. could well be left paying more than its fair share of the coastal states' obligations.

3) The financial burden of revenue sharing will be an additional disincentive for exploitation of critically needed hydrocarbons and other minerals.

4) There have been few specific reactions to the revenue sharing proposals that the U.S. has advanced. Hence, it is a propitious time to abandon this policy.

5) Revenue sharing has not proved to be an effective "bargaining chip" in the negotiations. In fact revenue sharing may be opposed by a significant number of developing coastal states and thus our revenue sharing proposals may not only fail to gain us support but may make it more difficult to obtain other substantive objectives.

6) Some members of Congress have expressed reservations about revenue sharing.

7) Revenue sharing, if based on royalties, would raise the prices of petroleum products and reduce output. As the chief consumer of fuels, the United States would be the principal country hurt by this but all nations would be affected.

8) Revenue sharing's greatest financial burden in the short term would fall on the U.S. given our plans to rapidly develop our OCS hydrocarbon reserves (part of Project Independence) and the growing technological capability of U.S. firms to develop distant continental margin areas.

Cons:

1) Revenue sharing has been part of the U.S. ocean's policy since the President's announcement in May,1970. Resolutions that have overwhelmingly passed in both the Senate and House endorsing the President's ocean policy have specifically endorsed revenue sharing. Private groups and prominent newspapers have made similar endorsements. To withdraw support for revenue sharing now would impair our domestic credibility and undermine the broad support we have been given.

2) Since 1970 , the U.S. has vigorously advocated in the international negotiations the need for an early Conference. Most developing countries have come to believe that the U.S. seriously and sincerely desires to accomodate both their interests and our own in a new stable agreement on the oceans. Abandonment of revenue sharing could subject the U.S. to the charge that we misled developing countries into supporting the need for a Conference helpful only to our navigational interests where we did not, in fact, intend to negotiate a settlement that would take their interests equitably into account. It would also cast doubt on the seriousness of all other U.S. proposals made in the LOS negotiations, particularly various offers of cooperation and assistance and make the achievement of our basic objectives much more difficult.

3) There is little risk that revenue sharing sums will be excessive. The amount of revenue that would be available is dependent upon many factors such as the method of computation, area involved, and the rate of sharing. There is every indication in the negotiations that the large majority of states are not eager to commit substantial funds.

4) The withdrawel of our revenue sharing proposal might be misunderstood at home and abroad as a gesture to the petroleum companies. In view of our difficulties on the problem of oil prices and profits, this is a particularly bad time to run such a risk.

5) There is no evidence that revenue sharing would deter development, particularly in the light of sharply increased prices. Costs might be passed along to the consumer or to the general taxpayer in the case of tax credits.

6) Revenue sharing is virtually the only benefit that can be offered to the many states that have little or nothing to gain by expansion of coastal state jurisdiction over seabed minerals. These states constitute a blocking third at the Conference and their interests must be accommodated if we are to achieve an overall settlement that protects U.S. non-resource as well as U.S. resource interests.

7) Revenue sharing obligations would apply to all coastal states at the same rate. Accordingly, the U.S. share must be considered in light of that of other states, and the resulting dimunition of the need for direct foreign economic assistance to developing countries. Foreign States are likely to have about 85% of the total world petroleum from which revenues would have to be shared.

8) The U.S. is seeking recognition and confirmation in international law for broad coastal state jurisdiction over seabed minerals. Achievement of this objective while protecting our navigational and other non-resource interests would be welcomed by the Congress. A variety of acceptable means are available to deal with the transfer of revenue sharing funds issue.

9) To withdraw our support for revenue sharing would jeopardize our efforts to gain support for the President's Five Conditions on the continental margin. By eliminating one, we would encourage the elimination of all and this would run the real risk that economic jurisdiction would evolve into a zone undistinguishable from a 200-mile territorial sea with serious consequences for our navigational interests.

10) Our credibility in international negotiations generally would be hurt.

11) We would eliminate one of the principal inducements for other countries to sign the LOS Convention.

12) It is economically inconsistent to make the unqualified claim that revenue sharing will be both a disincentive for exploitation and that revenue sharing will cause higher prices.

13) Revenue sharing based on the value of hydrocarbon production will not necessarily raise prices and it will not cause a reduction in existing output levels. In theory, a royalty could slow the rate of output growth; however, in practice, firms may not be deterred by revenue sharing which raises their total cost by an extremely small proportion.

Option 2. The U.S. Delegation should be authorized to support revenue sharing from seabed minerals production seaward of a 12-mile territorial sea if the Persian Gulf and North Sea are included. The precise rate that is acceptable would be determined on the basis of the criteria specified in NSDM-62 in full consultation with the Agencies concerned. In no event would the revenue rate exceed 1% of the value of the hydrocarbons extracted from the area.

Pros:

1) While it is likely that revenue sharing is more easily nogotiated if shallow areas close to the coast are excluded, there is no reason for the U.S. to take the

blame for insisting on that result.

2) Major offshore oil exploitation off the coast of other countries is in areas like the Persian Gulf and the North Sea that are at less than 200-meters depth. Inclusion of revenues from the areas is likely to significantly increase the total, and is likely to increase the pressure for lower rates of revenue sharing.

3) The total financial cost depends on the rate of revenue sharing: a lower rate for a larger area could be less costly than a higher rate for a smaller area.

4) Since deep water technology is likely to be used off the U.S. first, at the initial stages the U.S. might pay a relatively higher proportion of the total if revenue sharing does not include significant shallow areas.

5) Since the U.S. has only about 8% of the world's continental margins, over the long run the U.S. percentage of funds available for international development efforts arising from revenue sharing is likely to be significantly lower (than our current rates of voluntary contribution) and accordingly we have an interest in maximizing the revenue base.

6) The ability to present this Option has major negotiating advantages in reaching a satisfactory overall settlement on both non-resource and resource issues. The

good will votes of the geographically disadvantaged States are essential for achievement of our non-resource objectives and our straits position in particular.

7) Application of revenue sharing seaward of a 12-mile limit increases the likelihood that the US will be able to achieve agreement on application of other international standards to protect our nonresource interests.

8) The Delegation should have the flexibility to present a reasonably forthcoming approach on this issue in order to ensure that we have the latitude to achieve our overall objectives at the Conference.

9) A larger revenue sharing area, without a national tax credit arrangement, allows for a lower revenue sharing rate, which in turn is less distortionary in terms of investment and production decisions.

Cons:

1) Revenue sharing is designed in part as a device for accommodating legal differences on the extent of coastal state jurisdiction beyond 200 meters. A 12-mile inner boundary does not contribute to resolution of that issue.

2) Because coastal states clearly have undisputed existing vested rights within 200 meters, domestic and international opposition to revenue sharing starting at 12-miles is likely to be considerably greater.

3) While it is true that the U.S. has only about 8% of the world's continental margin, there is likely to be more production sooner off the U.S. and thus the actual U.S. contribution (given a set rate) for some time is likely to be higher than our total resource share.

4) the U.K., which is our closest supporter on these issues, is strongly opposed to revenue sharing landward of 200 meters. We might also run some risk of Arab opposition.

5) It is estimated that 90% of the recoverable hydrocarbon potential on the U.S. continential margin is located seaward of 12-miles. Extension of revenue sharing to this area even at a lower rate could substantially increase the U.S. obligation.

Option 3. The U.S. Delegation should continue to be authorized to support revenue sharing from seabeds mineral production seaward of the territorial sea or the 200-meter depth curve (or a functional equivalent), whichever is further seaward. The precise rate that is acceptable would be determined on the basis of the criteria specified in NSDM-62 in full consultation with the Agencies concerned, and would in no event exceed 5% of the value of the hydrocarbons extracted from the area. (As a tactical matter, the U. S. would not indicate that the reason for excluding large areas close to shore relates to its own interests, but rather explain this in terms of negotiability with the majority of coastal states.)

Pros:

1) All current U.S. production is from areas landward of the 200-meters depth curve, and most substantial production in the near-term would be from such areas. Exclusion of these areas accordingly will signficantly reduce the size of our obligations, and defer the timing of its payments, irrespective of the applicable rates within any likely range.

2) Revenue sharing is designed in part as a device for accommodating legal differences on the extent of coastal state jurisdiction beyond 200 meters. There is no doubt as to existing jurisdiction within 200 meters.

3) Because coastal states clearly have undisputed existing vested rights within 200 meters, domestic and international opposition to revenue sharing from that area is likely to be considerably greater.

4) The U.K., which is our closest supporter on these issues, is strongly opposed to revenue sharing landward of 200 meters. We should also not run a risk of opposition from Persian Gulf and other Arab States in the negotiation.

5) The economic review revealed that approximately half of the recoverable hydrocarbon potential on the U.S. continental margin is located landward of 200-meters. In the absence of significant differences in revenue sharing rates, exclusion of revenue sharing in the area landward of 200-meters would substantially reduce the US obligation.

6) The ability to present this Option has major negotiating advantages in reaching a satisfactory overall settlement on both non-resource and resource issues. The good will and votes of the geographically disadvantaged States are essential for achievement of our straits position in particular.

7) The Delegation should have the flexibility to present a salable and reasonably forthcoming approach on this issue in order to ensure that we have the latitude to achieve our overall objectives at the Conference.

Cons:

1) While it is likely that revenue sharing is more easily negotiated if shallow areas close to the coast are excluded, there is no reason for the U.S. to take the blame for insisting on that result.

2) Major offshore oil exploitation off the coast of other countries is in areas like the Persian Gulf and the North Sea that are at less than 200-meters depth. Inclusion of revenues from the areas is likely to significantly increase the total, and is likely to increase the pressure for lower rates of revenue sharing.

3) The total financial cost depends on the rate of revenue sharing: a lower rate for a larger area could be less costly than a higher rate for a smaller area.

4) Since deep water technology is likely to be used off the U.S. first, at the initial stages the U.S. might pay a relatively higher proportion of the total if revenue sharing only begins at a depth beyond 200 meters than would be the case if significant shallow areas are included.

5) Since the U.S. has only about 8% of the world's continental margins, over the long run the U.S. percentage of funds available for international development efforts arising from revenue sharing is likely to be significantly

lower than our current rates of voluntary contribution, and accordingly we have an interest in maximizing the revenue base.

Additional Option. The US Delegation should be authorized to support a greater rate of revenue sharing for seabed areas under coastal state control beyond 200-miles than those landward of 200-miles. While the U.S. Delegation would be authorized to support the above proposal in principle, there would be no position taken on specific proposals or rates of revenue sharing for areas beyond 200-miles until the Chairman of Delegation had consulted with the Chairman of the Task Force and senior representatives of the agencies concerned.

Pros:

1) There is a substantial likelihood that the differing views in the negotiations on whether coastal state control over seabed resources should extend beyond 200-miles can only be reconciled by accepting greater revenue sharing with the international community beyond 200-miles than landward of 200-miles in exchange for recog-

nition of coastal state resource jurisdiction beyond 200-miles.

2) There is no evidence that higher revenue sharing from the area beyond 200-miles would deter development as such costs might be passed along to the consumer or to the general taxpayer in the case of tax credits.

3) The great majority of states do not gain substantially by extending seabed resource jurisdiction beyond 200-miles. For these few that do, however, recognition of their control over such resources is essential for agreement to the Treaty. Hence the U.S. Delegation needs the flexibility to find a reasonable solution that will not be opposed by the great majority of the states and yet will protect our broad shelf interests.

4) The U.S. is seeking recognition and confirmation in international law for broad coastal state jurisdiction over seabed minerals. Achievement of this objective while protecting our navigational and other non-resource interests would be welcomed by the Congress. A variety of acceptable means are available to deal with the transfer of revenue sharing funds issue. The U.S. contribution must be considered in light of that made by other States and the resulting dimunition of the need for direct foreign economic assistance to developing countries.

5) It is possible that the ability to accept a higher rate of revenue sharing beyond 200-miles will considerably help reduce the pressure for an unacceptably high rate for the seabed area landward of 200-miles.

6) Since the U.S. percentage of seabed area beyond 200-miles decreases with increases in uniform depths world-wide, the U.S. loses less relatively by accepting a higher revenue sharing rate for such areas than it would if the rate were the same within and beyond 200-miles.

7) Since the U.S. has only about 8% of the world's continental margins, over the long run the U.S. percentage of funds available for international development efforts arising from revenue sharing is likely to be significantly lower (than our current rates of voluntary contribution) and accordingly we have an interest in maximizing the revenue base.

Cons:

1) Revenue sharing, even at modest rates, involves

large sums that would increase through time. There would be an undesirable drain on tax revenues and an adverse effect on the U.S. balance of payments position.

2) Any form of revenue sharing will face the problem of verifying that a coastal state has actually complied with its royalty payment obligations. There will be temptations to cheat on a common definition of the term "value of production," and the U.S. could well be left paying more than its fair share of the coastal states' common heritage obligations.

3) The financial burden of revenue sharing will be an additional disincentive for exploitation of critically needed hydrocarbons and other minerals.

4) There have been a few specific reactions to the revenue sharing proposals that the U.S. has advanced. Hence, it is a propitious time to abandon this policy.

5) Some Members of Congress have expressed reservations about revenue sharing.

6) Revenue sharing, if based on royalties, would raise the prices of petroleum products and reduce output.

As the chief consumer of fuels, the United States would be the principal country hurt by this but all nations would be affected.

7) Revenue sharing's greatest financial burden in the short term would fall on the U.S. given our plans to rapidly develop our OCS hydrocarbon reserves (part of Project Independence) and the growing technological capability of U.S. firms to develop distant continental margin areas.

8) While it is true that the U.S. has only about 8% of the world's continental margins, there is likely to be more production sooner off the U.S. and thus the actual U.S. contribution (given a set rate) for some time is likely to be higher than our total resource share.

2. Delimitation and Island Problems

As indicated, the problems of establishing boundaries between areas under the jurisdiction of neighboring coastal states, including the related islands problem, are highly complex and divisive. They concern not only seabeds resources but fisheries. On the one hand, it would be desirable to achieve agreement on the legal principles governing delimitation, and even more so on procedures for peacefully resolving delimitation disputes, since this is a major area of potential uncertainty and conflict over rights in the oceans. Such disputes present political problems for the U.S., particularly when friendly states are involved. Moreover, exploration and exploitation are usually delayed in disputed areas, thus conflicting with our goal of increasing global production. On the other hand, the differences on the issues are essentially bilateral in character, would not in fact be resolved definitively by an LOS treaty, and are likely to complicate the negotiations seriously.

If the issue is dealt with in detail, we like any other coastal state would be compelled to seek a result that favors our position vis-a-vis our neighbors; this would result in direct conflict with Canada and potentially with the USSR, Mexico, Cuba, and the Bahamas.

In this situation, while trying to ensure that our substantive interests in the issue are not prejudiced and making a strong attempt to provide procedures -- perhaps regional in character -- to deal with future boundary conflicts, our efforts should be directed toward preventing the issue from disrupting the Conference. As a matter of substance, a general reference to resolution of the issue in accordance with international law may well be the best result.

At the same time, we are preparing specific analyses of U.S. interests in order to deal with the contingency of a specific negotiation on the issue. The results of these more technical studies will be employed in a manner consistent with our overall policy posture on individual issues.

The additional question of whether small isolated islands should be entitled to full economic jurisdiction at the expense of the high seas and the international seabed area -- where no neighboring coastal state is involved -- is likely to be resolved in favor of such jurisdiction. States with such islands -- France, the UK, Brazil and Chile to name just a few -- are likely to press harder than the opposition, which would be protecting a community rather than individual interest. We should be aware that the effect will be to increase the importance

of many isolated islands and rocks in the Pacific and Indian Ocean in particular, and that existing sovereignty disputes are likely to get worse and new ones are likely to emerge. (The recent problems in the South China Sea are an example.) The U.S. stands to gain from jurisdiction off its own islands.

Accordingly, we should not oppose the French and British on the issue, but, unless they ask for our help, we should remain essentially silent rather than further risk identifying the islands issues with big power ambitions or involve ourselves directly or indirectly in the PRC's disputes with her neighbors on these issues.

3. Fisheries

The issue of coastal state fisheries jurisdiction has been of more interest to more states in the negotiation than any other. It also commands considerable domestic political attention.

As stated in earlier instructions, our specific fisheries objectives are to seek international acceptance of U.S. fisheries positions that(1) give the coastal state effective regulatory and economic control over coastal and anadromous species throughout their migratory range on the high seas, subject to international standards and review regarding, inter alia, conservation and utilization of coastal and anadromous fisheries, and (2) that provide for international regulation of fishing for highly migratory species. Our delegation has been authorized to adopt such tactics as will best promote achievement of these objectives. Specifically, in view of the broad developing country support for fisheries jurisdiction as part of a 200 mile economic zone, we have been authorized to indicate privately our willingness to support a possible fisheries compromise based on a fixed zonal approach. We have begun the process, and we propose further to seek achievement of our fisheries objectives through accommodation within the framework of a 200-mile economic zone.

The thrust of our efforts should be to promote a wide-spread settlement that such meets our objectives. Accordingly, we will seek/an accommodation which ensures special treatment for anadromous and highly migratory species; which places on coastal states international obligations to conserve the stocks and to ensure their optimum utilization; and which includes provisions regarding traditional fishing, coastal state enforcement rights and the applicability of dispute settlement. We will also attempt to obtain some control and preferential rights over /coastal species beyond 200 miles, if possible. Any decision to publicly support a 200- mile zone will be made by the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned. Consultations with key states and U.S. industry representatives will be maintained.

a - Coastal and anadromous species:

Over 80 percent of the total U.S. fish landings are coastal stocks, and we, along with the majority of nations in the Conference, have a substantial interest in coastal species. Coastal state control or preferential rights over

coastal and anadromous stocks beyond a 200 mile limit is not incompatible with a 200-mile zone. To the contrary, African, Asian, and other supporters of a 200-mile zone have proposed this result for coastal species, and have left room for special treatment of anadromous species. The basic US problem beyond 200 miles relates to anadromous species (salmon) rather than coastal species. In terms of our interests, a 200-mile zone without control over coastal species beyond 200 miles would be acceptable, provided we have control over salmon beyond 200 miles or achieve the practical equivalent, such as a total ban on fisheries for anadromous species outside a 200-mile zone. Accordingly, in the context of a 200-mile zone, the US should support coastal state control or preferential rights over both coastal and anadromous species that migrate beyond the zone. However, in doing so, we should recognize that our major problem is salmon, and it should be the major thrust of our efforts.*

(1) Conservation and Utilization

Under our approach the managing authority would set an

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*It should be noted that earlier instructions have indicated that sedentary species of fish (e.g., King Crab) would be subject to coastal state control. They could be treated either as seabed resources in the coastal seabed economic area, or as non-migratory fisheries or a separate category category under the U.S. fisheries proposal (NSDM 157).

allowable catch applicable to all fishing activities for a particular species (i.e., for coastal and anadromous species applicable to both coastal state and foreign fishing activities). Our standard for defining allowable catch is intended to achieve three major objectives: (1) obtaining maximum long-term benefits from the oceans' living resources, (2) providing US flexibility to manage our coastal fisheries in light of our own environmental and economic needs, and (3) ensuring meaningful conservation and environmental protection worldwide.

In order to achieve these objectives, the allowable catch should be designed by the management authority to achieve the maximum sustainable yield over time, consistent with certain qualifications. First, measures taken to maintain or restore the maximum sustainable yield must be based on the best scientific evidence available. Moreover, the management authority shall consider environmental and economic factors in determining allowable catch. Consideration of such factors can provide flexibility in the long run only to set allowable catch below sustained maximum sustainable yield, although short-term harvesting above maximum sustainable yield would be allowable under certain circumstances. Under this approach, the managing authority has flexibility in its management activities, and the allowable catch can and should

be set in light of the interrelationships among species so as not to reduce populations of associated or dependent species to an extent inconsistent with the health and stability of the fishery resource and the entire marine environment.

Within these parameters, our proposal requires a coastal state to permit foreign fishing to the extent that it is not currently achieving optimum utilization (i.e., to the extent it is not taking the allowable catch). The optimum utilization question is a contentious issue, due to its direct relation to the problem of access by foreign states. In addition to our concern for promoting maximum availability of global fish protein sources, and preserving a basis for U.S. access to coastal species off foreign coasts, we are seeking this obligation because we do not believe the USSR and Japan will accept expanded coastal state jurisdiction without this kind of guaranteed access. In this context, it should be noted that the basic U.S.position in the LOS negotiations is that a treaty is meaningless without participation of the major maritime powers, and we would undercut our own effectiveness by arguing that a fisheries regime can be imposed on the USSR and Japan.

Moreover, in practice we would have difficulty imposing a regime without damaging other interests. If the USSR and Japan are not satisfied with treaty provisions on ac-

cess, it is our assessment that they may well--as Japan did in the case of king crab--seek bilateral guarantees at the highest level from the U.S. and possibly from Canada to protect their fisheries off New England and Alaska.

The pressure for such guarantees could be substantial. Our proposal for access based on optimum utilization, coupled with our proposal for accommodation of traditional fishing within this scheme, provides a basis upon which we can point out to the USSR and Japan that their access will be substantially protected under the treaty.

For all of the reasons cited above, we recommend continued US support of the optimum utilization obligation as we have defined it.

(2) Management of Coastal and Anadromous Species

In arguing against the optimum utilization obligation, supporters of an exclusive economic zone state, among other considerations, that it is

not needed because it is in the interest of coastal states to maximize their economic return by negotiating for or licensing foreign access off their coasts. In essence (conservation aside), with respect to foreign access we believe this reflects a desire to treat fisheries much as mineral resources are treated: the coastal state would negotiate a joint venture or other arrangement, or would

issue licenses. Presumably, the coastal states would wish to get as much as the market would bear.

Economic flexibility, such as that provided by licensing or joint ventures, is not incompatible with the obligation to fully utilize the stocks up to the allowable catch. In fact, the existence of

> an economic incentive will tend to promote coastal state interest in ensuring optimum utilization. However, our current fisheries articles place certain limitations on coastal state discretion in these respects. The question, then, is whether in addition to providing that the coastal state ensure optimum utilization, the treaty should limit the discretion of the coastal state in how it permits foreign fishing. Three elements must be considered: whether the coastal state should have authority to ask as much as it likes for license fees; whether the treaty should provide for joint ventures; and how the accommodation for traditional fishing should be addressed within this framework.

(i) License Fees.

The U.S. articles allow coastal states to establish reasonable conditions for foreign access to coastal and anadromous stocks, but they limit fees to the cost of defraying management expenses. However, as indicated above, allowing the coastal state more of an economic incentive

would not be incompatible with our interest in ensuring optimum utilization. Furthermore, there are other benefits from a more flexible licensing scheme, such as the question of revenues for the U.S. from the large, valuable fish stocks off our coast, and the tendency to promote economic efficiency by rewarding those able to pay the highest fees. Distant water fishermen such as our own shrimp fishermen and the USSR and Japan, of course, would not like this idea. On the other hand, some countries such as Japan have experience with such systems, and we will continue to consult with our own shrimp fishermen in this regard. Our recommendation on joint ventures (discussed below) would seem to offer the shrimp fishermen some protection. Moreover, based on existing proposals it seems likely that the treaty will endorse special provisions for access by neighboring states, particularly geographically disadvantaged states. This could be of some help in protecting our shrimp interests off Mexico. However, a number of proposals limit the obligation to neighboring developing countries; whether the U.S. should accept it in that form would largely depend on other provisions regarding access.

Recommendation:

Assuming an obligation to permit foreign fishing to the extent stocks are not fully utilized, the U.S.

Delegation is authorized to accept a coastal state right to license foreign fishing for stocks under its jurisdiction subject only to a general limitation that the conditions of the license be reasonable and non-discriminatory as among foreign fishermen, and without any other limitation on the fees (e.g., fees could be fixed or subject to competitive bidding by the coastal state).

This recommendation does not necessarily apply to traditional fishing rights; the matter is discussed below.

(ii) Joint ventures.

It is likely that many developing countries will not regard license fees as a complete solution to their objections to an optimum utilization obligation. Many would like to enter into joint ventures that stimulate local participation and development. The existing U.S. articles are silent on this subject. The effect is that joint ventures operating under a coastal state flag would qualify for a coastal state guaranteed preferential share, while joint ventures employing foreign flag vessels probably would not.

In essence this requires U.S. distant water fishermen to make a complete conversion to coastal state flag and control in order to gain the political and economic benefits of joint ventures, as well as preferential rights. This seriously complicates the establishment of joint ventures because of (a) restrictions on fish landings by foreign vessels in a number of consuming countries, including the U.S.; (b) fears of nationalization or unpredictable regulation; (c) the requirement by many states that their nationals be employed on board their flag vessels; and (d) restrictions on conversion to foreign flag in some countries, including the U.S.

On the other hand, the current U.S. proposal does not preclude a competitive race among distant-water fishermen to get into preferred positions by establishing subsidiaries or joint ventures in coastal states. (Japan and the USSR as well as several other developed and developing states have already begun this, presumably as a hedge against expanded fisheries jurisdiction.)

Accordingly, we believe the U.S. should, at the appropriate time, and if consistent with the overall fisheries settlement, indicate that it is prepared to regard joint ventures in coastal state fisheries as entitled to preferential rights irrespective of the flag of the vessel. Some definition of a joint venture may be necessary in this context.

(iii) Traditional fishing.

One of the most difficult negotiating problems regarding our utilization concept relates to the effect on traditional distant-water fishing as coastal state harvesting capacity increases. Where the stock is not being fully utilized to the level of the allowable catch by all fishermen, our optimum utilization proposal meets the need for access. However, in most major fishing grounds, stocks are being utilized up to the allowable catch, and an expansion of the guaranteed share of the coastal state based on its harvesting capacity would require reductions in traditional foreign fishing. The question is one of determining what, if any, limitations there are on the expansion of the coastal state guaranteed share (including that under joint venture arrangements) at the expense of traditional fishing by others.

The US has an interest in increasing its own guaranteed share in major fishing grounds off its coast. At the same time, it has an interest in protecting US fisheries for coastal species off foreign coasts. Moreover, attempts to reduce Soviet and Japanese fishing off our coast solely on the basis of US capacity (i.e., with no treaty provision for traditional fishing) would cause strains in our relations. On the other hand, attempts to accommodate their interests bilaterally in the absence of multilateral treaty obligations to do so, might meet with strong domestic political

opposition. Accordingly, the US has favored a compromise on the issue that permits a gradual phase-out or compensation. The Delegation has been authorized broad flexibility in dealing with this issue, which we believe should be continued.

Developing countries tend to regard discussions of historic or traditional rights as inherently discriminatory against them, and this may at the least require rephrasing of the concept in terms of economic and social dislocation.

Under a system of coastal state license fees, we must determine the best relationship between the licensing system and the traditional fishing. The licensing and traditional fishing elements can be combined in a manner which is consistent in theory with our existing approach, namely that traditional fishing states are subject to the same access conditions as anyone else, but have a priority of access.* Consequently, for substantive and tactical reasons, our broad flexibility on the issue should be maintained and our approach should continue to be primarily one of encouraging compromise while continuing to press our objective of including some provisions for traditional fishing in the treaty.

*For example, one alternative would be to give traditional fishing states, to the extent of their traditional fishing rights, the option ofpaying the average fee obtainable for that fishery from fishermen of other states.

We may continue to address the issue only in general terms and avoid advocating a specific solution until we have a better understanding of what is negotiable.

(b) Highly migratory species

Assuming agreement on adequate coastal state control of anadromous species--which is generally consistent with the coastal state trends of the negotiation--our most difficult fishing negotiating problem relates to highly migratory species. Although practically all of the public and private debate has focused on tuna, the term highly migratory species also includes whales, small cetaceans, and other highly migratory marine mammals.

Because of their wide migration patterns, sometimes trans-oceanic, separate regulatory systems in individual 200-mile zones and in areas beyond 200 miles could not achieve sufficient control to ensure conservation or equitable allocation of the stocks of highly migratory species. A regional or international system capable of management throughout the migratory range of the stock is necessary. The U.S. interest in a regional or international regulatory system for tuna derives from these inherent problems of regulation, as well as from our in-

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terests in protecting our large distant water tuna fishery. Since whales and small cetaceans of one species occur in many oceans and at distances many hundreds of miles from any coastline, these creatures must be conserved on a worldwide basis through an international system. Whales and small cetaceans are unique among highly migratory species, first, because they are mammals and second because the interest shown in them by the vast majority of nations has been for their conservation rather than for their exploitative value. Only a few nations are now involved in exploiting these species. Whales and small cetaceans should be excluded from any arrangements of coastal state preference and if possible the need for international management should be specified. To whatever extent possible or appropriate, in working on the basic idea of international management, the specifics should be discussed and accommodation for these species made.

In view of the coastal state trend of the negotiation, our fundamental choice with respect to highly migratory species is to negotiate the best solution we can (attempting to gain support for pressuring Peru and Ecuador into a reasonable compromise or overriding their objections) or to risk being outvoted on the issue.

We believe negotiation in the LOS forum is the preferable course, and permits us to achieve some, perhaps considerable, protection for our distant water tuna industry. It is pertinent here that an increasing number of states appear to recognize that highly migratory stocks require a unique regime. Negotiations may also be helpful in solving our problem with the U.S. Trust Territory which has coastal interests in tuna. We have both an obligation and a long-range security interest in trying to accommodate the Trust Territory's LOS interests which are based in large part on its tuna interests.

Furthermore, even though there are many states interested in this issue, we will not resolve our major tuna problem off Ecuador and Peru if they do not ultimately accept an agreed solution; those economic sanctions we have chosen to use against them have not been effective, and we have thus far consistently rejected the idea of military protection for the tuna fleet. In addition, mounting Congressional pressure for the unilateral 200-mile claim is undercutting our bargaining position in this area.

On the other hand, negotiation may subject us to considerable pressure from the tuna industry and its supporters in Congress, although we will attempt to defuse this as much as possible through our consultations with them. This pressure is unlikely to be offset by countervailing pressure from coastal fishermen unless we are forced to choose between the two interests. As these factors show, this is an extremely sensitive area in terms of tactics, and the negotiations will have to be carefully carried out. Accordingly, use of the authority sought in this section will be determined by the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned.

The basis of our approach would be to retain the requirement for international or regional regulation of tuna. However, within this framework, we would add elements accommodating coastal state political and economic interests. In this connection, the political interests may be at least as important as the economic, particularly where Peru and Ecuador are concerned. In other words, the appearance of victory on the jurisdictional issue may ultimately permit those states to compromise substantially on the U.S. economic interest in access. In any event, our ability to build up developing country

pressure on Peru and Ecuador to compromise will be enhanced to the extent we make our own views appear reasonable and compatible with the developing countries' concept of an economic zone.

(1) Possible accommodations concerning fees, preferential rights, and licensing.

There are a number of possible accommodations we might make within the framework of international or regional regulation. Our first preference would be for a royalty or fee system with agreed fees paid to the coastal state for all fish caught within 200 miles of their coasts. The idea of giving coastal states some benefit for fish caught within the 200-mile zone is appealing psychologically. It has been discussed with our tuna industry and received reserved support. Under this approach, either the treaty would establish the fees or criteria for such fees (subject to dispute settlement), or the fees would be fixed by regional commissions or agreement, or both.

Another type of accommodation would be based on a system of preferential rights. If necessary, this could be combined with the royalty system described above. The U.S. has negotiated specific preferences based on economic criteria for developing tuna fisheries (for Mexico) in the Inter-American Tropical Tuna Commission (IATTC). This is known, and we are now committed within the IATTC to discuss with Mexico and the Central American States new regulatory systems which take into account developing fishery needs.

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Moreover, the US was in fact prepared to accept coastal state preferential rights for Peru and Ecuador in direct negotiations, the major restraint being our reluctance to use an LOS bargaining chip or to otherwise prejudice our juridical position before the LOS Conference. Accordingly, we should be prepared to accept an acommmodation in the LOS treaty that establishes a preference in principle for coastal state fisheries based on specific criteria such as the developing nature of the fisheries. It is in our economic interests, and probably more negotiable politically, to limit that preference to the fisheries zone off the coast of the country concerned. Alternatively, we could discuss special allocations, based on specified criteria, for the entire catch of a tuna stock anywhere, as we do now with Mexico.

While the above approaches could include joint ventures, they do not contemplate coastal state licensing of foreign fishing, which goes to the heart of our dispute with Ecuador and Peru. In negotiations with Ecuador and Peru, we have in fact been authorized to accept a scheme which the coastal state could interpret as a form of licensing, on the basis of guarantees regarding access and fees.

A combination preferential rights or allocation-licensing system would not be regarded favorably by our fishermen. This

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is a very sensitive issue that requires very careful consideration before any such possibility is even implied. Moreover, the acceptability of such an approach would depend to a critical degree upon the criteria and protections included. However, a system with a licensing element may be necessary in reaching an accommodation within the framework of international or regional regulation. Thus, although we will try to work out a system which does not include licensing, if the other approaches do not work and there are reasonable indications that the hard-line states favoring licensing are prepared to make an accommodation with the United States and other distant water tuna fishing nations, we should maintain flexibility in this area in accordance with the recommendation below. The Law of the Sea Conference is not the proper forum for negotiation of specific allocations, which is a function of the international commissions established or to be established, but a generalized rule with general criteria could be worked out in the Conference if we decided to do so.

(2) Possible accommodations concerning enforcement.

It is our assessment that the chances for maximizing U.S. economic benefits from any such negotiation would be significantly enhanced by offering political (jurisdictional) concessions in exchange.

We could agree to give coastal states the same right to enforce international or regional tuna regula-

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tions in a 200-mile zone as we have proposed regarding enforcement of regulations for coastal species. We have proposed a system of coastal state arrest and flag state trial for coastal and anadramous species in the LOS negotiations, provided the flag state has established a domestic system for trial in such cases. We have agreed to this system off the coast of Brazil, and it appears in a number of our other treaties. In fact, coastal states would be likely to board tuna vessels under our current articles in order to check for the presence of coastal species anyway; indeed, we as a coastal state would hardly be willing to agree that we could not board any vessel that tells us it is not fishing for coastal species off our coast. One of the few issues that was once tentatively agreed with Ecuador and Peru in direct negotiations was this type of enforcement system, which even included a reference to transfer of an arrested vessel to the flag state after coastal state proceedings. While we are not requesting such authority in this paper, the US Delegation in the CEP talks was in fact authorized to agree even to coastal state prosecution, but industry fears of prison sentences and absence of significant pressure on the issue from Peru and Ecuador at the time led us to withhold exercise of that authority.

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Were we sufficiently satisfied with the result, we could in fact significantly sweeten the political and juridical appearance of this approach. For example, if there are acceptable provisions on allocation and licensing of tuna, international and regional regulations, and enforcement, it is entirely possible to specify that the coastal state shall regulate all fishing in the 200-mile zone in accordance with the provisions of the treaty and international and regional regulations adopted pursuant thereto. (In effect this means the regional regulations prevail.) The restraints on recognizing jurisdiction in a direct settlement with Peru and Ecuador (i.e., harm to our juridical position or loss of an LOS bargaining chip) clearly do not apply in the global forum of the LOS Conference. We do not recommend that such political concessions be the starting point for discussions on the issue, but we do believe that willingness to consider a substantial political quid-pro-quo would be of substantial benefit to us.

(3) Regional Commissions

Coastal states (and Micronesia) are likely to be suspicious of international or regional commissions even if they are satisfied with the treaty rules the commission would apply. As we have learned as a coastal state ourselves, the Commissions tend to be obstructed by distant-water

suspicious of regional commissions even if they are satisfied with the treaty rules the commission would apply. As we have learned as a coastal state ourselves, the Commissions tend to be dominated by distant-water fishing states. Our major objective in supporting the regional commission approach is adequate participation in the decision-making process. Accordingly, if it will help get agreement on the basic commission role in regulation and allocation, we should try to solve the coastal States' problems not only by supporting rapid dispute settlement procedures, but through guideliness to deal with an impasse situation, a rule requiring coastal state agreement to any regulations applicable in its zone (this is the case anyway if unanimous agreement is required under commission procedures), or other reassuring provisions.

(4) Recommendation:

The possible accommodations presented above represent general concepts we wish to explore. However, the route we choose and the details of any specific plan remain to be worked out after further consultation and negotiation. In addition, because it is difficult to predict the direction of our discussion with other states on these issues, the Chairman of the Delegation in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned will also maintain the flexibility to

consider concepts or plans other than those specifically discussed herein in support of our objectives on highly migratory species.

In sum, as outlined above, we recommend negotiating flexibility to protect our distant-water tuna industry in the framework of international or regional regulation coupled with specified coastal State preferences and rights as necessary to prevent an ultimate defeat on the issue and to promote a timely and successful Conference. In this connection, we note that an accommodation on tuna must not only provide adequate protection for our tuna interests, but should be accompanied by a more accommodating approach by the coastal states concerned on our other interests, including straits, general navigation, and deep seabed issues.

F. Pollution

The current United States position includes a general obligation not to pollute the marine environment, requires adherence to international standards for marine-based sources of marine pollution, provides for the establishment of international standards for such sources of marine pollution, and permits the coastal state to apply higher standards to seabed resource activities, drilling, and fixed installations in the exercise of its rights in the Coastal Seabed Economic Area. With respect to vessels, a state may not impose higher standards except on vessels entering its ports and on its flag vessels, although it may enforce international standards in its territorial sea, has limited enforcement powers beyond, and can prosecute vessels in its ports for violations of international standards irrespective of where they occur. Warships are exempt from the U.S. pollution articles and obtaining an exemption is part of the U.S. position.

There are general difficulties in the negotiation resulting from developing country fears concerning the effects of environmental standards on economic development. We have not pressed for binding international standards for land-based sources of marine pollution, which seems to be their major concern in this regard. In any case, land-based pollution issues will not be addressed in any detail at the Conference. The most difficult aspect of this issue will be LDC adherence

to minimum international standards in the Coastal Seabed Economic Area. Similarly, while there is some sentiment favoring standards no higher than flag state standards for developing countries this position is not widely held and we will continue to resist a situation in which obligations are in effect placed only on developed states.

Vessel-source pollution

The most sensitive pollution problem relates to negotiating vessel-source pollution. The advocates of a 200-mile exclusive economic zone or patrimonial sea include general pollution control jurisdiction as one of the coastal state rights. Without further specificity, this would apply to vessels and would in essence give coastal states a basis for serious interference with navigation. While there is no widespread opposition to international standards for vessel-source pollution, many coastal states--led by Canada and Australia--favor "residual" coastal state rights to impose all types of pollution standards in a zone beyond the territorial sea when the coastal state judges that international standards do not exist or are inadequate, and coastal state enforcement of international and national standards. Australia favors compulsory dispute settlement to prevent abuse of the proposed coastal state rights. Japan and France have proposed limited coastal state enforcement of international dumping and discharge standards in a zone beyond the territorial sea of perhaps 50 miles.

The October Conference on Marine Pollution, sponsored by the Intergovernmental Maritime Consultative Organization (IMCO), faced a number of aspects of the coastal State problem, although it was not intended to resolve jurisdictional issues. The new IMCO treaty establishes international construction and discharge standards and permits a coastal State to enforce international standards "within its jurisdiction," a term not defined by the treaty.

A so-called "compromise" proposal on coastal state standards achieved a 2/3 majority in committee but not in plenary after vigorous opposition by the United States. The proposal had three elements:

(1) the coastal State may impose higher standards in respect of vessel discharges within its jurisdiction where specific circumstances so warrant;

(2) the coastal State may not impose higher vessel construction, design, or equipment standards in respect of pollution control (even in ports); and

(3) the prohibition on higher construction standards does not apply in areas the particular characteristics of which, in accordance with accepted scientific criteria, render the environment exceptionally vulnerable.

It should be noted, however, that it may not be possible to directly translate this experience into predictions regarding the law of the sea negotiations since many delegates were not familiar with or were not representing the law of the sea positions of their governments. Also, of course,

others were negotiating with their law of the sea interests in mind and were trying to gain negotiating advantages for later use.

United States ability to deal with this problem has been, and remains, limited by conflicting policy interests. Permitting coastal state construction standards outside ports in vaguely defined areas seriously prejudices our navigational interests and was our principal objection. We did not like the "specific circumstances" restriction on our right to impose coastal state discharge standards, which are required by the Federal Water Pollution Control Act. The prohibition on higher construction standards, particularly in ports, is inconsistent with the thrust of the Ports and Waterways Safety Act, which provides for United States construction standards.

Construction and discharge standards in the 1973 IMCO Convention are high and will substantially reduce vessel pollution, although in some respects we would have preferred higher standards.

Also, we were later successful in creating a new Marine Environment Protection Committee in IMCO, which is now functioning, to update and improve vessel pollution standards and to make IMCO a more effective institution in dealing rapidly with environmental problems. The new committee could also be effective in providing special pollution control standards of all types to deal with special regional problems as we have proposed.

Without minimizing the difficulties that remain, our success at IMCO in obtaining an exemption for warships and other government non-commercial vessels, and our success in obtaining compulsory dispute settlement, Provides a stronger basis for obtaining both in the LOS pollution negotiation. In particular, the warship exemption language was negotiated directly with the Mexican representative who has chaired the LOS pollution working group, and who had been somewhat hostile to the idea; compulsory arbitration was adopted with the tacit cooperation of the USSR, despite lack of formal support and a private indication of an intention to reserve on the article.

Disapproval of all of the following four options would mean that the United States would continue to support and work for adoption of its present position although there would be additional exploratory authority as noted in paragraphs (5) and (6).

(1) Option on Coastal State Enforcement of International Discharge Standards: that the delegation be authorized to support, if necessary to attain widespread maritime state agreement, coastal state enforcement (including arrest and prosecution) of international discharge and dumping standards in a zone extending to a maximum breadth of 50 nautical miles from the coast. This would include discharges prohibited or regulated pursuant to the 1973 IMCO Convention in the areas prescribed therein and dumping prohibited or regulated

pursuant to the 1972 Dumping Convention. Discrimination between vessels of different nationalities (including those of the coastal state) would be prohibited. U.S. agreement would be conditional on acceptance of an exemption for warships and on adequate procedural protections for commercial vessels including prompt release under bond, liability for unreasonable enforcement actions and compulsory dispute settlement.

PROS

1) The United States is in a very small minority in its views on extreme limitations of coastal state rights and must be prepared to move on the issue if we are to influence the views of the majority. The advocates of the exclusive economic zone and patrimonial sea concept include general, although undefined, pollution control jurisdiction in a 200-mile zone. Canada, Australia, and the majority of coastal states support coastal state enforcement rights as well as residual rights to set standards. France, Japan, the U.K., and Norway, all maritime states, have either publicly or privately been willing to accept coastal state enforcement rights in a zone.

2) Our major concern in terms of the possibilities for coastal state abuse and disruption of shipping through inconsistent national standards would be a right for coastal states to set construction standards. Our major opponents

make no distinction between coastal authority to set discharge and construction standards and the negotiation is likely to continue to avoid that distinction unless we can actively exert influence. This option would considerably enhance our ability to shape the course of the negotiations.

3) The safeguards contained in the option including compulsory dispute settlement and liability for unreasonable enforcement actions would greatly minimize any potential for abuse. Also, no enforcement action could be taken unless an illegal discharge had been observed by the coastal state.

4) Discharges may well damage the coastline and flag state enforcement alone is not sufficient to protect U.S. environmental interests off its coasts. Port state enforcement, which we have proposed, would be effective but we have met strong opposition from maritime states and have received little support from others. Limited coastal state enforcement rights provide the only realistic possibility of achieving further protection in this negotiation.

5) Discharges present the most visible and thus politically sensitive pollution problem for coastal states and have been the basis for their complaints.

6) A warship exemption in the pollution section will be easier to obtain if coastal states are satisfied

with the basic pollution control regime. This option could thus assist us in avoiding negotiating problems on the pollution regime for warships both in coastal areas generally and in straits.

CONS

1) The U.S. draft pollution articles were tabled in the summer of 1973, are very complex, and have not received adequate consideration by other delegations. More time is needed to test their negotiability.

2) Since the last substantive law of the sea negotiations in August 1973, the 1973 IMCO Marine Pollution Conference has taken place and has produced high vessel pollution control standards, thus enhancing the negotiability of our present position which is based largely on international standards.

3) This option would not provide substantial additional environmental protection for the oceans and for the interests of coastal states.

4) Jose Vallarta of Mexico, Chairman of the Seabed Committee pollution working group, has told some delegation members privately that his concept of a final LOS settlement would be navigation rights in straits, no coastal state pollution control zone and an economic zone satisfactory to developing countries.

5) Coastal state enforcement authority provides some basis for coastal state interference with navigation off its coast and could thus harm U.S. national security and commercial navigation interests. The abuse potential is greater than with resource jurisdiction since pollution violations can credibly be charged against any vessel while resource-related violations are logically restricted to vessels equipped for fishing or seabed mineral activities.

6) Enforcement action against discharge violations has inherent difficulties which limit its effectiveness. This may, then, add little in terms of environmental protection.

(2) 100-mile zone.

Option: That if Option 1 is approved, the Delegation be authorized to support a zone of a maximum of 100 nautical miles from the coast for coastal state pollution enforcement if agreement cannot be reached on a 50-mile limit. Under Option 1 above and this option, the U.S. would make it clear, publicly and privately as appropriate, that it could not accept coastal state pollution control in a zone of 200 miles breadth.

PROS

1) Canada, a leader of the coastal states in the pollution negotiation, has used the 100-mile figure in its Arctic Pollution Control Zone and probably could not accept a lesser figure. U.S. acceptance of the 100-mile figure could induce Canada, in the context of overall

discussions on the pollution regime, to work for general acceptance of 100 miles, thus providing major assistance to us in avoiding a 200-mile limit.

2) While any arbitrary figure cannot necessarily be justified from an environmental standpoint, there is a 100-mile zone in many areas for international standards in the 1954 Oil Pollution Convention. Also, the U.S. attempted to obtain a 100-mile "no-discharge" zone in the 1973 IMCO Convention, thus indicating some environmental rationale for the 100-mile figure.

3) If agreement is not possible on a 50-mile figure, we should move to 100-miles since otherwise the negotiation would almost certainly move to a 200-mile zone.

4) The expanded area would not greatly increase the possibility of abuse by coastal states since the physical patrol capability of most states is limited, since a discharge must be observed before any action can be taken, and since there would be procedural safeguards.

CONS

1) This would present a larger area of possible interference with navigation by coastal states.

2) This would probably not significantly increase environmental protection, particularly off the U.S. coast.

3) The 100-mile zone presently existing in the 1954 Oil Pollution Convention does not include any coastal state rights and is thus not a precedent for use of 100 miles in this situation.

4) International discharge standards presently applicable beyond 50 miles differ from those applicable within 50 miles and violations of them are almost impossible to detect through observation.

(3) Coastal State Discharge and Dumping Standards

Discussion: Under existing authority in NSDM 177, a United States objective is to obtain a right for coastal states to establish and enforce vessel pollution control standards in the territorial sea. However, for tactical reasons related to the negotiation of straits transit, we have publicly proposed that the coastal state have only an enforcement right and no right to set standards in the territorial sea.

As is stated earlier, we now feel that it will be tactically advantageous to argue that the pollution regime in straits be the same as the general pollution regime rather than to attempt to negotiate a separate pollution regime for straits. Consequently, we will try to negotiate a general vessel pollution regime from the coast seaward, thus simplifying the connection with a straits regime. If this option and option 1 are approved granting coastal state rights to set discharge standards, there will be no domestic problems and we could accept it as a final solution since we do not have a major domestic concern with pollution control construction standards for ships transiting the territorial sea. However, if this option is not approved, the existing authority in NDSM 177 on this point would continue

regarding discharge standards. The issue of authority in ports is dealt with separately.

Option: that the Delegation be authorized to support a coastal state right, in addition to the right in option 1, to establish in the zone discharge and dumping standards higher than the international standards. The coastal state would be authorized to enforce both the international and its own higher domestic standards. Discrimination between vessels of differing nationalities (including those of the coastal state) and the setting of any discharge or dumping standards which would have the practical effect of preventing navigation would be prohibited. The coastal state authority would, as in option 1 above, be subject to the warship exemption and the same procedural protections for commercial vessels. The U.S. would, of course, continue to strongly oppose any coastal state standard--setting or enforcement authority for international or domestic construction standards off the coast.

PROS

1) Discharges present the most visible and thus politically sensitive pollution problem for coastal states and have been the basis for their complaints.

2) Discharges in areas near the coast may well damage the coastline and thus coastal states, including the U.S., have a legitimate interest in controlling them.

3) Concern with discharges and dumping seem to be at the heart of the positions of France, Japan, and Norway. Although none of these have publicly stated a willingness to accept coastal state standard-setting, we had private indications to that conclusion. Thus, this would provide a more unified maritime country approach.

4) This would considerably enhance our ability to avoid coastal state rights regarding construction standards since we could help to shape the course of the negotiations. To date our opponents have avoided the discharge/construction distinction and the negotiation may well continue to avoid it unless we can actively exert influence. This distinction is more important than the enforcement vs. standard-setting distinction since enforcement of construction standards is far more dangerous than the setting of higher discharge standards.

5) A number of developing countries have difficulty reconciling their political support for coastal state rights with their shipping interests (India, Liberia, Ghana, and others). This may offer them a reasonable compromise.

6) If adopted for an area broader than 50 miles (the present "no-discharge" area in the 1973 IMCO Convention) it would provide the U.S. and other coastal states with additional protection for the environment since we could apply high standards beyond 50 miles as we proposed to do in the IMCO Convention.

7) A warship exemption will be easier to obtain if coastal states are satisfied with the basic pollution regime. This could thus assist us in avoiding negotiating problems on warships in straits as well as in coastal areas.

8) At most, coastal states could set zero discharge limits which would not provide substantial operational problems at least with regard to oil, whereas, with construction standards, coastal states could set an almost unlimited variety of standards. As to dumping, we do not dump off the coasts of others and would thus have no difficulty complying with a "no-dumping" standard.

9) If coastal states do not have discharge standard-setting rights outside the territorial sea, they may well decide that an extension of the territorial sea is necessary to protect their environment.

CONS

1) Enforcement action against discharge has inherent difficulties which limits its effectiveness in protecting the environment.

2) If a zone of more than 50 miles is authorized, vessels would be required to discharge further out to sea if coastal states utilized this right. This could produce some operational problems.

3) The environmental benefit to the U.S. would be minimal since high standards already are applicable to 50 miles which is the area of greatest environmental sensitivity and greatest potential for pollution.

4) Coastal state rights to set higher standards could undercut efforts to achieve higher international standards.

5) The October 1973 IMCO Marine Pollution Conference has produced high standards for vessel pollution control, thus enhancing our negotiating position favoring exclusively international standards.

6)The high standards of the 1973 IMCO Convention should be given a reasonable chance to be in effect before decisions are made to increase them.

(4) Port State Construction Standards

We will continue to support our existing position that there should be exclusively international vessel pollution control construction standards in the territorial sea and on the high seas and that coastal states should not have any right to set higher standards. Also, we will continue to support the right of the flag state to set higher standards for its vessels (thus covering all traffic between U.S. ports). We will also continue to support internationally agreed procedures in IMCO for establishing special construction standards in special areas that clearly require it, such as the Arctic. The present U.S.position also allows port

states to set higher construction standards for all vessels entering their ports. While it is clear that the U.S. prefers this result, and that the Delegation should continue to be authorized to accept it, the question is raised as to whether, for tactical reasons, the Delegation should have the authority to support the elimination of the port state right. Any decision to use that authority would be made by the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned.

Option: that the Delegation can support exclusively international vessel construction standards for pollution prevention for foreign ships entering ports. This would, however, also allow port states to apply internationally-agreed standards prior to their entry-into-force or prior to their internationally-agreed effective dates. Because of Congressional sensitivity on this point, we would consult appropriate Congressmen and staff members in advance of utilizing this authority.

PROS

1) The apparent inconsistency between U.S. opposition to higher coastal state construction standards and support of higher port state construction standards is tactically disadvantageous and undercuts our best argument--that coastal states will establish inconsistent standards and thus harm navigation.

2) Because most traffic off our coast enters U.S. ports, we are open to the charge of protecting ourselves while denying protection to states which have large transit traffic off their coasts.

3) A number of maritime states opposed port state standards and we may be able to use this to influence their position on other aspects of the vessel pollution issue. Our experience in the IMCO Conference indicates that many maritime states are willing to move rather far toward coastal state vessel pollution control rights in order to obtain a quid pro quo of a limitation on port state rights.

4) The U.S. utilized the threat of port state standards to obtain high standards in the 1973 IMCO Convention, thus largely achieving its major international purpose in the field of international construction standards for pollution control.

CONS

1) The result would be inconsistent with the thrust of U.S. legislation. Environmentalists and their supporters in Congress, particularly those from states with major oil ports, will find it difficult to accept permanent relinquishment of this existing right. In addition, a recent Supreme Court decision leaves open the possibility that individual states of the United States

could set higher standards, thus increasing domestic political pressure against restrictions on that right.

2) Port states are unlikely to disrupt their own trade by establishing unreasonable or inconsistent standards. This is a distinction between port and coastal state standard setting that can be used in response to charges of inconsistency in the U.S. position.

3) Relinquishment of this right will eliminate future U.S. action against foreign ships for foreseeable and possibly unforeseeable problems and eliminates the possibility of U.S. domestic application of the IMCO standards to smaller foreign tankers than specified in the IMCO treaty. Most tankers entering U.S. ports are too small to be covered by the new IMCO construction standards.

4) This would diminish our negotiating ability to raise international standards in the future. This is particularly important since under the 1973 IMCO Convention a small number of major maritime states with 50 percent of the world's tonnage can block adoption of amendments.

5) The basic vessel pollution regime may only be settled in the overall context of the settlement on an economic zone, thus making it unnecessary to make substantive concessions to gain tactical advantage.

6) Since almost all vessel traffic off the coast of Canada is headed for the U.S. or Canada, we could agree bilaterally to apply high construction standards to all vessels entering ports in the context of obtaining an overall accommodation with Canada on pollution issues. This possibility would be lost if we utilized the authority in this option.

(5) Ship-Rider Concept

Recommendation: that the Delegation have the authority to explore privately the concept of a "Ship-Rider" approach to enforcement of tanker discharge standards. Under this approach, a ship rider would be placed aboard each tanker at the outset of a voyage and he would monitor the ship's operations as they relate to pollution prevention. If he detected illegal discharges, he would be obliged to report to the authorities of the next port-of-call or of the flag state who would be required to take enforcement action against the vessel.

(6) Specific Area Construction Standards

Recommendation: that the Delegation be authorized to explore privately the concept of coastal state standard-setting, subject to IMCO approval, of construction standards for well-defined areas with special ecological and navigational problems. This possibility was broached by Canada during

recent bilateral consultations and further discussion would be useful in determining a possible accommodation with Canada.

G. Scientific Research

The United States has a major interest in assuring the maximum possible freedom of scientific research. The U.S. has a substantial investment in oceanography that includes not only the value of specialized ships and equipment, but also laboratories for analysis and facilities for training and education. The U.S. interest includes important military and economic interests, as well as the interests of the scientific community. One indication of the economic value is the discovery by U.S. scientists in 1970 of the hydrocarbon potential in many areas of Southeast Asia and the similar recent discoveries off the West Coast of Africa.

Freedom of research will be most difficult to maximize in areas beyond the territorial sea where the coastal state exercises resource jurisdiction. Difficulties also exist in the deep seabed where proposals have been made that would exclude research from existing high seas freedoms and make it subject to regulation by the international seabeds authority or restrict the areas in the deep seabed where research can be conducted. We shall continue to oppose restructions on scientific research in areas beyond national jurisdiction, subject to reasonable environmental regulations on deep drilling and a general obligation to conduct research with strict and adequate safeguards for the protection of the marine environment.

Under the existing Continental Shelf Convention, scientific research concerning the shelf and undertaken there requires coastal state consent. The existing requirement that the coastal state "shall not normally withhold its consent" has proved inadequate to ensure reasonable scientific access to the continental shelf off many countries because of the ambiguity of the phrase and the absence of compulsory dispute settlement.

If a consent regime were applied to the proposed 200-mile or continental margin limit for coastal seabed resource jurisdiction, the area of greatest interest to U.S. scientists and most U.S. scientific research off foreign coasts would be subject to coastal state control. Moreover, the tendency of developing countries to treat fisheries and seabed resources together in an economic zone context suggests the adoption of the same consent regime in the waters above the seabed. In fact, the supporters of an exclusive economic zone are generally supporting a coastal state consent requirement for all research in the zone.

The U.S. proposal does not include a requirement for coastal state consent, but rather imposes a series of obligations upon the researcher and his flag state to respect coastal state resource interests in connection with research in waters and seabed areas where the coastal state exercises jurisdiction over resources. These obligations include

advance notification, participation, data sharing, assistance in interpreting data and results and compliance with applicable international environmental standards. They are designed to accommodate coastal state interests in both seabed resources and coastal fisheries, while protecting our interest in maximum freedom of research.

In addition, a significant portion of U.S. military research in the oceans is conducted from civilian vessels. This U.S. research interest is protected in our present articles by a subtle structuring of the language so as to make it arguable that compliance with obligations to the coastal state is mandatory only when research is potentially related to resources.

The initial response to our proposal has been disappointing, with opposition coming from both developing and developed countries. The USSR, with a research interest parallel to ours, remains wedded to the existing approach and has proposed even greater coastal state control over seabed research than exists at present, while demanding complete freedom of research in the waters above. This may be related to Soviet opposition to extensive coastal fisheries jurisdiction. The U.K., Canada, and France have reacted similarly, in part because they may consider their interest in coastal state seabed resource jurisdiction, unrelated to scientific research, protected by leaving the 1958 Continental Shelf Convention undisturbed. Canada may be prepared to discuss a coastal state obligation to grant consent under specified circumstances.

While there is disagreement as to whether a change in the U.S. position should be authorized, no agency maintains that an early change in the United States position is either necessary or desirable. Scientific research was the last issue on which work began in the Seabed Committee, and consideration of the issue is accordingly still dominated by rhetoric and posturing that has been overcome to a greater extent on other issues. Our approach to the issue is novel, and we should spend more time explaining it and refining it. If possible, we will try to depoliticize the issue by giving it less prominence in public debate. In sum, it is agreed that the Delegation should make every effort to persuade others of the merits of the approach we have taken.

However, the opposition of key developed States on continental margin research and the numerical strength of the coastal developing States put us at a disadvantage on this type of issue. Moreover, neither side is likely to believe that the other side will wreck the conference over it.

Our best chance for success with respect to opposition from developed States is to emphasize the similarities of our research interests and attempt to separate research issues from coastal seabed economic jurisdiction issues. This is one of the reasons we are attempting to encourage the development of a regime different from that in the 1958 Continental Shelf Convention for resolution of seabed resource jurisdiction, and to address the outer boundary

problem in connection with that regime rather than the Convention.

With respect to developing countries, our best chance for success is in persuading them that they can obtain more from a mulilateral settlement than they can from bilateral bargaining for permission to conduct research. To achieve this, means must be devised to enhance their research capabilities in exchange for support for an advantageous scientific research regime. We are continuing to examine alternatives which may benefit both the developing countries and the United States. Some possibilities have been identified which we may wish to explore with developing countries and other developed countries:

- seek to foster development of regional training centers for scientists and technicians from developing countries, including multilateral support and some commitment from developing countries to increase the possibilities of success;
- provide carefully selected developing countries with research vessels from U.S. government surplus property for operation by the country in connection with local and regional research;

- offer a significant contribution (e.g., $50 million over ten years) for development of regional training centers and provision of research vessels as outlined above, as well as other contributions to the international community, in conjunction with contributions by other countries, for oceanographic research by developing country scientists;
- expand upon the coastal state's right of participation by commiting the research state to provide for coastal state participants to travel to the researching state or scientists of the latter to travel to the coastal state to participate in planning the research (with appropriate protection for U.S. control), coastal state participants to accompany the vessel when research is conducted, and coastal state participants to return to the institution where analysis and evaluation of the scientific data will occur.

However, a question arises as to the necessity for additional authority for the Delegation should it appear that there is no basis for agreement without a consent requirement. Accordingly, the following option is presented:

OPTION:

Should the Chairman of the Delegation, in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned, determine that there is no basis for agreement without a consent requirement, and that an accommodation could be reached which would better serve United States research interests than being outvoted on the issue, the Delegation is authorized to negotiate a consent requirement in areas of coastal state resource jurisdiction, provided that the coastal state is required in all cases to grant consent if specified criteria are met The criteria would be those we are already authorized to support as flag state obligations. Consent must also be presumed in the absence of a denial of consent within a fixed period of time. As at present, compulsory dispute settlement would apply. Our approach and instructions regarding military research would continue unchanged.

PROS

(1) This result would be a significant improvement over the existing requirements of the 1958 Continental Shelf Convention and the proposals of other countries since consent would not be discretionary. If certain conditions are met, consent must be granted, and compulsory dispute settlement procedures would be available.

(2) This issue is not an all or nothing proposition. The point of the option is to permit the Delegation to decide if the risks of holding out exceed the disadvantages of some accommodation on consent--a judgment whose timing is critical and that can best be made by those present at the negotiations.

(3) Our ability to protect our interest in military research depends largely on subtle drafting that is included in the ultimate treaty without a full explanation of our problem. This, in turn, requires active participation in drafting, which will not be possible if the majority is drafting a consent regime and we cannot participate. Even the requirements of our existing proposal--e.g., data sharing and participation--create serious military research problems unless an article is artfully drafted.

(4) If the developing countries conclude that there is no way to work with the U.S. on scientific research issues, we may not only lose influence over the outcome in coastal areas, but in the deep seabeds as well. This, in

turn, could have negative implications for our positions on the deep seabed, including our security interests in assuring that the international authority does not regulate all activities on the deep seabed.

(5) Some states that believe that yielding their right of consent under the 1958 Convention amounts to a renunciation of a vested right may be more amenable to this approach, which in essence does not eliminate the right but imposes obligations regarding its exercise.

(6) Determination to stick with the present position to the end is credible only if the opposition believes our determination is genuine. It is more likely that the opposition will preceive that we are playing to a domestic audience and full expect to be defeated.

CONS

(1) This would not necessarily be an improvement over the 1958 Continental Shelf Convention since the option applies a form of consent not only to shelf research but to research in the water column as well.

(2) Despite good faith efforts by the reseaching state, under this proposal a coastal state could deny consent by stating that the obligations have not been met. While adequate compulsory dispute settlement procedures would guard against repeated refusals of this type, the option amounts to a

practical right of denial for a specific cruise due to the operational necessities of oceanographic research, a right of denial not inherent in our present position.

(3) In light of the subtle structuring of our draft articles to protect military research, a change of position during the negotiation could draw attention to our interest in military research and cause difficulties in preserving it.

(4) There is a juridical similarity between a consent regime in the territorial sea and a qualified consent regime. Thus a qualified consent regime such as this implies greater coastal state jurisdiction rather than less and is inconsistent with our objective of limiting coastal state jurisdiction as much as possible.

(5) From the viewpoint of coastal states, this option does not meet their desire for consent if it must be granted when specified criteria are met and, consequently, coastal states should have little greater preference for this option than they do for the original U.S. position. Therefore the ultimate effect of the option could be to facilitate movement to a more stringent consent regime to which the U.S. could not agree.

(6) With the possible exception of the Soviet Union, no other country in the negotiation conducts as much research and has as great an interest in protecting the right to conduct research as the U.S. This is a visible reality to other countries whose positions on the issue may be dictated by tactics or a desire to enhance their jurisdiction beyond

the territorial sea. If we stand firm, movement to accommodate our science interest is possible after the resource issues are resolved.

(7) We have not adequately explored the advantages of multilateral aid offers or increased participation in oceanographic research in exchange for support for our existing position.

(8) As a coastal state ourselves, we believe that our articles protect our coastal interests while allowing a reasonable degree of freedom of research. Once they understand them most developing and developed countries should come to realize their own interest in a similar regime.

II, The Deep Seabeds

In his May 23, 1970 Oceans Policy Statement, the President supported the establishment of an international regime and machinery to authorize and regulate deep seabed mining, and the collection of revenues from mining to be used primarily to promote the economic advancement of developing countries. The President also stated that he did not believe it to be either necessary or desirable to try to halt exploration and exploitation of the seabeds beyond a depth of 200 meters during the negotiating process. Most members of Congress and of the mining industry have supported this policy.

The UN General Assembly Declaration of Principles Governing the Deep Seabed, adopted without dissent, and the relevant General Assembly Resolution establishing the mandate of the Law of the Sea Conference, also call for the establishment of an international regime and machinery for the seabed beyond national jurisdiction as the common heritage of mankind. An earlier General Assembly Resolution, which the US and others opposed, called upon all states and persons to refrain from exploiting the deep seabeds pending the establishment of the international regime and machinery.

In August 1970 the US introduced draft articles in the form of a working paper pursuant to NSDM 62 and the President's statement. The fundamental thrust of those articles is the

establishment of an international regime and machinery (usually called "the authority") for non-discretionary licensing on a first-come first-serve basis, regulation to ensure sound environmental practices and to prevent claims to extraordinarily large areas of the seabed, control over regulations by a council in which the U.S. and other industrialized states have adequate voting protection and whose scope of discretion is also limited and defined by treaty, payments in the form of fees and royalties for mining rights, and compulsory settlement of disputes, including a right of action against organs of the international organization for exceeding their authority under the treaty. For reasons related to our national security interests in using the deep seabeds, the role of both the organization and of individual States is carefully circumscribed so that neither has a basis for arguing that it has jurisdicition over all uses of all or any portion of the deep seabeds.

The UN Seabed Committee has prepared alternative texts on a deep seabeds regime for the Law of the Sea Conference. With minor refinements, the U.S. has negotiated for three years the inclusion of texts contained in or derived from the basic portions of the 1970 U.S. draft. By and large, the U.S. alternative is the most oriented toward a market exploitation system with a minimum of regulation. What discretion of regulatory authority the proposed international organization would have, however, was intended to be guarded against by

institutional arrangements giving the U.S. and other states with similar interests adequate voting participation to protect our important interests, as well as by carefully drawn treaty provisions, and compulsory dispute settlement.

In contrast, the fundamental thrust of developing country positions has been strongly in support of a highly centralized and powerful authority which would decide at what times and under what conditions the seabeds would be exploited. The approach has been a reflection of their attitude toward resource production on land. Recognizing that the capital and technology to exploit is in the hands of a few companies from developed states, they wish an organization representing the entire international community to participate in the technology and benefits from the exploitation of "the common heritage of mankind." The most prominent chosen instrument is an "Enterprise" (an exploitation arm of the international authority which would have the exclusive right to exploit the deep seabeds, and could negotiate service contracts or joint ventures with the companies.

Deep seabed mining has been the subject of several studies by the UN Secretary General and others. While relatively little is known of the potential mineral wealth of the deep seabed, the present prospects for manganese nodule recovery have been widely publicized. Deep seabed exploitation in the reasonably foreseeable future is likely to occur only with

respect to manganese nodules that are on or near the surface of the seabed. At present, the principal metals of commercial interest in the nodules are nickel, copper, and cobalt, although some companies have indicated that manganese is also of interest.

The comprehensive economic review concluded that the U.S. would benefit economically in a variety of ways from development of a domestically-based ocean mining industry, although the degree of benefit was not agreed upon. These would include more secure sources of supply for nickel, manganese, and cobalt (economically recoverable reserves of all these metals are negligible in the U.S.), an improvement in the balance of payments deficit attributable to these metals, lower prices than might otherwise prevail, and increased technological capability and federal revenues associated with the new industry.

There is general agreement that the U.S. Delegation should be authorized, as a matter of tactics, to give the impression of a shift to a posture less accommodating than our current posture, to demands for broad international regulatory authority. The main issues relate to the substance of our ultimate approach. In the course of the economic review, a difference of opinion developed on whether a deep seabed authority is economically necessary or desirable and, if it is necessary or desirable for economic or other reasons, whether the underlying approach of the 1970 working paper already involved too much regulation.

It is recognized by all, however, that the U.S. has a significant economic interest in a legal order which permits timely, efficient development of seabed mineral resources and which assures security of investments and supply. It is also recognized that the U.S. has security interests in the deep seabed and waters above which are currently safeguarded by the 1958 Convention on the High Seas. These security interests must continue to be safeguarded by preventing a new regime which could permit natural resources claims to the seabed to expand into broader jurisdictional claims over all uses of areas of the seabed and possibly the superjacent waters. And it is recognized that at this late date any substantial shift of position by the U.S. toward a more restrictive deep seabeds position is likely to have a significant inhibiting effect on the entire Conference.

It is noted that all of the options presented assume that the common heritage principle may be implemented by provisions for revenues from deep seabed exploitation to go to the international community, principally for assistance to developing countries. It is also recognized that the Delegation should be authorized to support assistance for land-based producing nations which may be adversely affected by deep seabed exploitation.

I. Options Relating to the Basic Structure and Authority of the International Machinery for Deep Seabed Mining
[Select one from Options A-D]

In the light of the above, the following options are presented with respect to whether the U.S. should continue to support appropriately circumscribed international machinery for deep seabed exploitation or whether the U.S. should be authorized only to support a claims registry system relying largely on national actions (or no institutional arrangements at all). It is the opinion of the Special Representative of the President for the Law of the Sea Conference, the Chairman of the NSC Interagency Law of the Sea Task Force, and the broad consensus of opinion, with a few exceptions, of the Executive Committee of the Task Force and the Public Advisory Committee on the Law of the Sea, that a decision to support institutional arrangements without any rule-making procedures (Option C), or no institutional arrangements at all (Option D), would be inconsistent with obtaining a timely multilateral agreement on the law of the sea and ocean uses, and would amount to a decision not to seek such agreement.

Option A: An international regime and machinery which would ensure access by interested U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation. Consistent with these goals the Delegation should be authorized to accept an international authority with broad flexibility to regulate deep seabed mining so

long as the U.S. and other countries which can be expected to supply the technology and capital for such mining exercise sufficient voting control to protect their interests.

Pros:

(1) This option would provide maximum flexibility in achieving U.S. goals and would be the most negotiable.

(2) Adequate control with respect to the decision-making organs of the authority would provide almost the same functional protection as limitations on the institutional structure or power of the authority.

(3) The parameters of deep seabed mining for manganese nodules and adequate environmental protection from such mining are only poorly understood and as such it would be beneficial to U. S. interests to provide for substantial

flexibility in the authority. At such time in the future as other mineral resources of the deep seabed become economically exploitable, substantial flexibility will be needed to effectively manage the new forms of exploitation.

Cons:

(1) There are no significant economic conditions requiring that a legal order include an international authority which would manage the development of deep seabed resources. The more discretion which such an authority has the greater would be the potential for abuse.

(2) An authority with substantial discretion to "manage" deep seabed mining could introduce substantial economic inefficiencies and additional transaction costs.

(3) Adequate voting control would not offer the same degree of protection for U.S. interests as a careful limitation of the structure and power of the authority.

(4) Adequate voting control may be as difficult to negotiate as limitations on structure and power and in any event such voting control could only ensure negative control to prevent unfavorable actions.

(5) The structure and power of the authority may largely determine whether the U.S. objectives of access to deep seabed mining under reasonable conditions can be realized.

Option B: An international regime and machinery which would ensure access by interested U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation.

(THERE IS NO PAGE 8)

Such a regime and machinery would provide a stable investment climate for development of deep seabed mineral resources and would preclude discretion to discriminate among applicants or against US or other deep seabed mining firms, or to introducing requirements not economically justified. In this respect the system would have the following functional attributes and safeguards:

-- there would be no discretion to choose among qualified applicants for mining rights or to deny an application that was properly certified by a sponsoring state (the system would operate on a first-come first-serve basis with some automatic device such as competitive bidding used in the event of simultaneous applications for the same or overlapping sites);

-- there would be no power to control prices or production levels;

-- any international machinery would be kept small with discretion only as necessary to carry out specific authority entrusted to it;

-- sponsoring states would certify compliance with qualifications for mining rights and would collect revenues due;

-- the treaty would protect non-resource uses of the seabed;

-- the treaty would set out the essential terms for mining within specified ranges satisfactory to protect US interests, encourage development, and ensure stability of investment. These would include:

-- provision for financial obligations (taxation) set either specifically or within a narrow range and not so high as to deter orderly or timely development;

-- other terms and conditions essential for stable investment decisions;

--the treaty would establish rules for the prevention of claims to extraordinarily large areas of the seabed;

-- the treaty would rely heavily on the role of sponsoring states for implementation of the system;

-- the information required of holders of mining rights would be limited to information essential to the exercise of the authority's functions;

-- the authority would only have discretion to propose reasonable regulations, on specified matters within specific treaty limits, including regulations to prevent interference with other uses and to protect the marine environment from deep seabed resource activities and deep drilling. These regulations would go into effect only after Council approval and only after one-third

of the contracting parties did not object within a specified time;

-- the authority would be controlled in all significant respects by a Council in which the U.S. was assured of voting participation giving the U.S. and states with similar interests reasonable assurance that we would be able to prevent adverse decisions on important substantive issues;

-- the treaty would be drafted so as to require US agreement to be bound by treaty amendments;

-- the system would provide for the protection of the integrity of investments made under the system and for compulsory settlement of disputes arising under the system. This would include provision for states or concerned private entities to bring an action against the authority for exceeding its authority or for impairing the integrity of investments.

-- the label for the system is unimportant.

Pros:

(1) The economic review concluded that such a system would be consistent with U.S. economic objectives. Moreover, such a system would not constitute a discretionary resource "management" system but, like some domestic regulatory agencies, rather would be a strictly limited regime with functional authority only as clearly required by the nature of deep seabed mining.

(2) Such an approach could be a negotiable outcome. Tactically,we can appear to be backing a considerably more powerful organization than is in fact the case, thus reducing the ideological difficulties in the negotiation. This approach is understood by other key negotiators.

(3) Since this approach is consistent with the President's Oceans Policy Statement of May 23, 1970 (which supported creation of an international regime and machinery to authorize and regulate deep seabed exploitation in accordance with the common heritage principle), and is similar to the existing U.S. position, it would maintain U.S. credibility.

(4) Exclusive rights for deep seabed exploitation would be legitimized by an internationally recognized organization. As such, greater investor protections would be offered than under an approach relying principally on national legislation.

(5) The existence of an international organization and assured influence over its decisions would protect our navigational and security interests from expanding jurisdictional claims.

(6) This system can impose conditions that will prevent states from claiming extraordinarily large areas of the seabed without the intention of commercial development in the reasonably near future, as for reasons of national pride or prestige. Such claims could pose the threat of expanding jurisdiction and could also retard development of mine sites by firms with the capacity to engage in such mining.

(7) International environmental standards would be uniformly applied to firms of all nationalities, thereby

avoiding a competitive disadvantage to U.S. firms which, in the absence of such international standards, would be subject to public pressure for high standards under domestic legislation or might shift their operations to a "flag of convenience" with lower standards and with a resulting loss of economic benefits and environmental protection to the U.S.

Corporate and banking officials believe that legally recognized exclusive mining rights in a specific area for a specific time period are necessary to justify the large capital financing needed for deep seabed mining, despite the fact that poaching or claim jumping may not be likely. Because of variations in minerals content and other variables in nodules, mine sites are not fungible but rather require a refining process carefully tailored to each particular site. As such, for the substantial investment decisions required, it is imperative that there be maximum stability of expectations concerning exclusive rights to particular sites.

(9) This approach is supported by resolution of both houses of Congress and by the Public Advisory Committee on the Law of the Sea, including members representing the hard minerals industry.

Cons:

(1) The economic review concluded that without reference to political or other non-economic factors there are no significant economic conditions requiring that a legal order include an international authority which would manage the development of deep seabed resources.

(2) For the foreseeable future, there are likely to be few firms relative to the availability of mine sites since nodule mining is capital intensive and potential mine sites are plentiful. Therefore, a system of exclusive mining rights is unnecessary for security of tenure.

(3) Fears of expanding jurisdiction affecting navigation and security interests may be overemphasized and in any event can be protected by a general treaty provision.

(4) It is not clear that States or firms would claim an area without the intention to commence commercial development in the near future. If they do, they would perform the valuable function of a speculator -- to effectively withhold resources from the market until the price more accurately reflects the scarcity of the resource and the demand for it, thereby avoiding the premature depletion of valuable resources.

(5) We do not know whether deep seabed mining raises a substantial environmental problem. If it does, we can seek to accommodate environmental interests by general treaty provisions or in a forum outside of the Law of the Sea Conference. Furthermore, environmental standards might be used to indirectly effect price and production controls.

(6) Creation of an international organization would create additional transaction costs for deep seabed mining. Any regulatory discretion, no matter how carefully circumscribed, might be used to discriminate against U.S. firms or to introduce requirements with no economic justification.

(7) There are so many specific conditions to be met before this system would be acceptable as formulated, and there is such a likelihood that all conditions would not be met, that we may be forced to make some difficult decisions with respect to accepting a system based upon this model.

Option C: An international authority limited to functioning as a claims registry, information center, and consultative forum which could make recommendations to contracting parties. This system would have the following functional characteristics:

-- mining claims would be registered on a first-come first-serve basis with competitive bidding used in the event of simultaneous applications for the same or overlapping sites;

-- the treaty would include general obligations on contracting states to ensure that registrants under their sponsorship would move to commercial production within a reasonable period of time, would take reasonable measures to safeguard the environment, and would have reasonable regard for other uses of the deep seabed. States would be left free to determine the best way to implement these obligations;

-- the financial obligation would be placed on sponsoring states which in turn would determine the best way to obtain the necessary revenues;

-- the system would provide for compulsory dispute settlement to ensure that national obligations were fulfilled.

Pros:

(1) If adopted, such a system would provide minimum disincentives to development of deep seabed resources on an efficient basis and would eliminate discretion which might be used to discriminate against U.S. concerns or to introduce requirements which would foster economic inefficiency.

(2) The Economic Review concluded that there are no significant economic conditions requiring that a desirable legal order include an international authority which would

manage the development of deep seabed resources (i.e., that such an authority was not the only way to enable the granting of exclusive exploration and exploitation rights to a mine site).

(3) Conflict among firms over mine sites is unlikely in view of the large number of primary mine sites, the small number of potential operating firms, and the high capital investment required.

(4) Creation of a more powerful international organization and system could result in additional transaction costs for deep seabed mining.

(5) Our past experience with domestic regulatory agencies has not been good in terms of their effect on the structure of the industries regulated and their ability to make better decisions for the industry than could the marketplace.

CONS

(1) Such a system is non-negotiable at any national price.

(2) In view of the interrelation between the deep seabed negotiations and the negotiations on all other issues, if the U.S. adopted this approach it would mean a decision not to negotiate a law of the sea treaty. As such, all our ocean law objectives, including our national security objectives, which can be best served by a timely and successful law of the sea treaty, would be seriously jeopardized.

(3) The President's Oceans Policy Statement of May 23, 1970 supported the creation of an international regime and machinery to authorize and regulate deep seabed exploitation. This position has been overwhelmingly endorsed by both Houses of Congress. For the U.S. to go back on this decision at this time would seriously impair our credibility domestically and internationally.

(4) Whatever the merits of the differences between this option and option B, these are not worth the domestic and international effects on the President's credibility of going back on his policy and offers.

(5) Since the Economic Review concluded that a strictly limited system along the lines of Option B would be consistent with U.S. economic objectives, there is no need to carry the substantial negotiating burden of a radical shift to this option.

(6) This system would not as effectively protect U.S. interests as Option B since, the treaty obligations would, in effect, be less specific and as a result would merely transfer discretion to the compulsory dispute settlement machinery.

(7) Because of its almost complete reliance on national action, this system would tend to produce expanded national claims over non-resource uses highly prejudicial to our vital security interests with respect to the deep seabeds and the high seas above.

(8) This approach would play into the hands of those who wish to wreck or delay the Conference. The U.S. would be charged at home and abroad with violating the UN General Assembly Declaration of Principles which called for the establishment of an international regime and machinery to give effect to its provisions. Given the negotiating realities, such an approach would be interpreted (even by sophisticated observers) as a conscious decision by the U.S. to withdraw from or destroy the negotiations. This could well provoke retaliation against the U.S. on other issues in the negotiations or through unilateral claims or actions against U.S. mining companies.

(9) Though such an approach would effectively end U.S. influence in the negoitations it might not prevent conclusion of a new comprehensive law of the sea treaty even without the U.S. In the absence of U.S. influence the regime and machinery which emerge are likely to be damaging to vital

U.S. security and other interests and may well, through time, become the governing legal regime and machinery binding on all states including the U.S.

(10) Our experience has been poor with flag state obligations to ensure adequate pollution control standards, or to impose standards nearly as high as Congress and the public wish to impose on US operations. This is prejudicial both to our environmental interests, and to our economic interests in avoiding unequal requirements for US operations.

(11) A general obligation for sponsoring states to guard against extraordinarily large claims does little to satisfy concerns that developing countries or others will seek to claim large areas for speculation, for political and strategic reasons, or to reduce or delay seabed mining, thus restricting areas available for present mining operations and potentially interfering with the stability of exclusive claims.

(12) The Law of the Sea Conference is widely regarded as a test of multilateral diplomacy, and of the continuing viability of the UN system. This approach could seriously and unnecessarily damage our political relations with developing countries, such as Mexico, which have a strong commitment to the common heritage principle and the establishment of an organization. The effect is likely to bring us closer to a general "north-south" confrontation.

(13) Corporate and banking officials believe that legally recognized exclusive mining rights in a specific area for a specific time period are necessary to justify the large capital financing needed for deep seabed mining, despite the fact that poaching or claim jumping may not be likely.

(14) The US mining legislation contemplated by this option is essentially the same as that contained in the nearly 100-year-old U.S. mining law. After extensive review, this Administration has submitted a new mining bill that fundamentally alters the earlier claims system. It will be difficult to support both without inviting charges of executive branch mismanagement.

(15) Although not binding, the resolutions of any consultative organ would be a political reality, and would probably be far more prejudicial to us than any controlled rule-making procedure. It would be costly to persistently disregard such resolutions.

Option D. No international authority for deep seabed mining. This would mean:

-- any legal regime needed for establishing exclusive exploitation rights would be established under national legislation coordinated to the extent feasible through reciprocal agreements among those states licensing exploitation.

-- any obligations for environmental protection or to prevent claims to extraordinarily large areas of the seabed would need to be established in the treaty as general obligations on states or negotiated separately.

-- the treaty would either reflect a general obligation on states to share revenues for international community purposes or such a provision implementing the principle of the common heritage would be negotiated separately.

PROS

(1) Deep seabed mining could take place under national legislation in the absence of an international agreement.

(2) Creation of even a claims registry system could result in additional transaction costs for deep seabed mining.

(3) Conflict among firms over mine sites is unlikely in view of the large number of primary mine sites, the small number of operating firms, and the high capital investment required. Though there may be potential for political friction over deep seabed mining claims, we have made no systematic analysis of the potential for such conflict and the cost of such conflict should it occur.

(4) Even a claims registry system could, through time and subsequent treaty amendments, become a fullblown international organization.

CONS

(1) Such a system is non-negotiable at any rational price.

(2) In view of the interrelation between the deep seabed negotiation and the negotiations on all other issues, if the U.S. adopted this approach it would mean a decision not to negotiate a law of the sea treaty. As such, all our ocean law objectives, including our national security objectives, which can be best served by a timely and successful law of the sea treaty, would be seriously jeopardized.

(3) The President's Oceans Policy Statement of May 23, 1970 supported the creation of an international regime and machinery to authorize and regulate deep seabed exploitation. This position has been overwhelmingly endorsed by both Houses of Congress. For the U.S. to go back on this decision at this time would seriously impair our credibility domestic and internationally.

(4) Whatever the merits of the differences between this option and option B, these are not worth the domestic and international effects on the President's credibility of going back on his policy and offers.

(5) Since the economic review concluded that a strictly limited system along the lines of Option B would not harm U.S. economic interests, there is no need to jeopardize the important U.S. objectives at stake in the negotiation by such a radical shift in position.

(6) Any system which does not provide for internatinal recognition of exclusive mining rights would not provide the security of tenure necessary for a stable and efficient legal regime for deep seabed mining and could lead to retaliation against the U.S. firms by the majority of nations of the world which maintain that deep seabed minerals are the common heritage of mankind.

(7) Because of its almost complete reliance on national action, this system would tend to produce expanded national claims over non-resource uses highly prejudicial to our vital security interests with respect to the deep seabeds and the high seas above.

(8) Such an approach would undermine the U.S. environmental interest in effective regulation of deep seabed mining and is likely to lead to higher environmental regulation of U.S. industry than foreign industry.

(9) Though such an approach would effectively end U.S. influence in the negotiations it might not prevent conclusion of a new comprehensive law of the sea treaty, even without the U.S. In the absence of U.S. influence the regime and machinery which emerge are likely to be damaging to vital U.S. security and other interests and may well, through time, become the governing legal regime and machinery binding on all states including the U.S.

(10) Any effort to conclude reciprocal arrangements with the range of interested countries would be extremely difficult and could prove highly costly even if such an approach were politically feasible.

(11) The US mining legislation contemplated by this option is essentially the same as that contained in the nearly 100-year-old US mining law. After extensive review, this Administration has submitted a new mining bill that fundamentally alters the earlier claims system. It will be difficult to support both without inviting charges of Executive Branch mismanagement.

(12) Without any seabed organization, the U.N. General Assembly is likely to keep the issue on its agenda. While its resolutions on the deep seabeds would not be legally binding, this is close to the worst conceivable forum for considering deep seabed mining issues. Particularly because the issue is not perceived as one that turns largely on great power prerogatives, the political costs of persistently disregarding such resolutions could be high, and would affect our entire posture in the U.N.

II. Option concerning fallback authority to permit the authority to directly exploit the resources of the deep seabed under carefully safeguarded circumstances subject to full maintenance of a non-discretionary access system.

If the United States adheres to its long standing position that there should be an appropriately structured international regime and machinery for the development of deep seabed mining under reasonable conditions which will ensure access by U.S. firms, an additional issue may be presented as to the U.S. position on whether the authority will be permitted to directly exploit deep seabed resources. The U.S. has repeatedly stated that it will not accept an exclusive operating monopoly for deep seabed mining. Such

a monoploy would not serve the community interest in an efficient legal regime for deep seabed mining and would not ensure access by U.S. firms. The issue, then, is whether the authority would be permitted to directly exploit seabed resources within a system which simultaneously guarantees access by U.S. firms under reasonable conditions for exploitation. This could be structured either within an unitary system required to grant mining rights to all interested and qualified applicants or by establishing a joint system or exploitive arm in parallel with but separate from a non-discretionary access system along the lines of option B above.

The Economic Review concluded that it is preferable that the authority not have power to directly exploit seabed resources but that if it does have such power, the direct exploitation operation should be insulated from administrative functions so that such operations would not receive a competitive advantage. A principal concern seems to be that an enterprise with operating authority might discriminate against exploiting firms in favor of itself. Another concern is that through time direct operating authority might lead to a monopoly on deep seabed mining. These potential concerns in permitting the authority to directly exploit might be reduced by insulating the exploitative arm from any regulatory authority, by minimizing the role and discretion of the authority (i.e. an

option similar to option B), and by prohibiting the use of revenue sharing funds for financing of the direct exploitation operation. Under these carefully circumscribed conditions direct exploitive authority might not harm U.S. interests.

Though it would seem preferable not to permit direct exploitation, a U.S. position which permitted direct exploitation conditioned on acceptance of a non-discretionary access system might provide a possible middle ground between the U.S. position and the advocates of an exclusive operating enterprise. Such a position should be used only should it become clear that agreement to giving an international authority legal power to directly exploit is necessary to reach agreement on the deep seabed mining issue.

Option: If the Chairman of the Delegation, in consultation with the Chairman of the Task Force and the senior representative of the agencies concerned, determines that it is necessary in order to achieve the principal U.S. deep seabed negotiating objectives, the Delegation is authorized to support, in the context of a deep seabeds regime

that meets the principal U.S. objectives, a power for the authority to directly exploit seabed resources, provided that all direct exploitation functions are

insulated from administrative functions so as to avoid discrimination in favor of the direct exploitation operation and provided that international revenues generated from other operations may not be used to underwrite the direct exploitation operation. Such a direct exploitation operation should have the following attributes:

-- the system ensures non-discretionary access by interested U.S. firms to deep seabed minerals under reasonable conditions for exploitation;

--the exploitation operation would have authority to enter the market directly or through service contracts or joint ventures;

-- the direct exploitation operation would be required to compete for licenses or contracts and in all other respects on equal terms with all other licensees or contracting parties, whether states, groups of states, or private companies;

-- there would be no obligation for states to participate in or financially contribute to the exploitation operation;

-- to avoid a conflict of interest leading to discrimination in favor of the direct exploitation operation there would be a careful separation of operating functions from administrative or licensing functions. This would include a separation of personnel and chains of responsibility;

-- international revenues from seabed resources could not be used in any way subsidize the direct exploitation operation;

-- to avoid creation of a monopoly on deep seabed mining any direct exploitation operation would be subject to the same rules and regulations as all other operations including the rules and regulations to prevent extraordinarily large claims to the deep seabed;

-- the direct exploitation operation would be subject to compulsory dispute settlement at least to the same extent as all other operations and the authority itself.

Pros:

(1) Support for a right to establish a parallel direct exploitation operation would greatly enhance the negotiability of the U.S. approach for non-discretionary access.

(2) Support for this position would be close to our existing position since under the current U.S. proposal the developing countries could form a joint venture to compete on an equal basis with other operators.

(3) This may satisfy the desire of at least some developing countries to participate in the exploitation of the "common heritage" while minimizing the role of direct exploitation and preventing interference with private exploitation.

(4) Our principal objections to direct exploitation as it is usually described are its potential exclusion of U.S. firms from the market, its potential monopoly character, the possibility that such exploitation would become an inefficient producer through politicization of its internal structure, and the potential for discrimination in favor of the direct exploitation operation. This proposal, however,

does not exclude U.S. firms nor establish a monopoly and it minimizes the risk of conflict of interest which might lead to discrimination. To the extent such a direct exploitation operation is inefficient, it will compete poorly or go out of business.

(5) A developing country interest in a direct exploitation operation which must operate under the same rules and regulations may reduce the pressure for broad or economically undesirable regulation.

(6) Since there will be many more first-generation mine sites for manganese nodules than could be profitably exploited for the near future, the existence of what is in effect one more firm in the market would not harm U.S. interests.

(7) If the U.S. cannot negotiate and support this middle outcome, a less acceptable regime may become part of the treaty without significant U.S. input and over our objections. We would then be faced with a decision whether to refuse to accept the treaty for this reason and lose benefits achieved on other issues. It is not clear, however, that a carefully structured direct exploitation operation would significantly harm U.S. interests.

(8) The non-discretionary access of U.S. firms to deep seabed resources under reasonable conditions for exploitation would in no way be impaired.

Cons:

(1) No matter how carefully constructed there is some risk of discrimination by the authority in favor of a direct exploitation operation.

(2) U.S. support for an international organization engaging in direct commercial activities would be a dangerous precedent which might be more difficult to control in other settings.

(3) If an enterprise were structured to enable it to operate through joint ventures or contracts with private firms it is unnecessary for it also to have the authority to enter into direct exploitation.

(4) Such direct exploitation operations would provide additional competition for U.S. firms interested in deep seabed mining.

(5) The full implications of this approach are unclear.

III. Options concerning methods of funding of an international authority (Select A or B)

Again assuming that the U.S. will continue to support the creation of appropriate international machinery with respect to deep seabed mining, the question of the source of funding for the machinery may be an issue. The U.S. approach thus far has been to allow the authority to use funds generated by licensed exploitation activity (e.g. license fees) for the payment of the administrative expenses of the authority and to permit a first call against international revenues for the same purposes. Until sufficient funds are generated in this way, the authority may borrow and States may agree to give sympathetic consideration to requests for loans. A question has been raised whether to continue along these lines or to shift to support for a funding system along the lines of present United Nations funding.

Since the arguments in favor of one option are in essence the arguments against the other, only "pro" arguments will be presented under each.

Option A: The US should continue to oppose financing the Authority by State contributions, and should continue to support exclusive financing of administrative expenses from international revenues from seabed mining, with borrowing authority in early years before sufficient international revenues are generated. (This would not of course preclude voluntary state contributions, e.g., a one-time capital contribution to get the authority started.)

Pros:

(1) If income that would otherwise be used for development assistance must be diverted to pay for administrative costs, the developing countries are less likely to support a large bureaucratic structure. In fact, a number of LDCs have already made speeches urging a small efficient organization in order to protect benefits for all mankind.

(2) The history of UN funding suggests that the US government will almost automatically pay a large and perhaps unfair share under a state contibution system, and that such contributions do not buy greater influence and may even foster resentment.

(3) From an economic point of view, it makes more sense for the deep seabed operations to pay the cost of the necessary machinery for their benefit than it does for all taxpayers to, in effect, subsidize the industry.

(4) The theory of US "control" through financial contributions implies US withdrawal or violation of its assessement obligations if it is dissatisfied. Since the deep seabeds organization would be established only as part of a comprehensive treaty that also protects our security and non-deep seabed interests, such a course would both violate our treaty obligation and be extremely dangerous for our general oceans interests, including the deep seabed mining rights of our nationals.

Option B: The US Delegation is authorized to support the position that funding of an international organization for deep seabed mining shall be only by state contributions in accordance with United Nations practice.

Pros:

(1) Since the U.S. would be a major contributor (up to 25% of the funding), we might have greater influence over the organization.

(2) Since the organization would be dependent on contributions, it would have a greater interest in avoiding actions that abuse its authority.

(3) A self-financing organization has unpredictable implications.

(4) The funding of the organization would be subject to the US appropriations process.

IV. Computing financial obligations for the generation of international revenues from deep seabed mining

Under all approaches implementation of the principle of "the common heritage" requires a sharing of revenues generated from deep seabed mining for international community purposes. The financial obligations required to generate international revenues should not be so high as to interfere unduly with the orderly development of the resource. In order not to impair stable conditions for investment such revenue sharing requirements should be either specifically set in the treaty or should be set within a well-defined range in accordance with specified criteria.

In establishing a basis for revenue sharing it is important to utilize an approach which will be simple and easily administerable, easily understood in the negotiation, and applicable to socialist as well as capitalist and mixed systems. Similarly the approach should seek to avoid introducing distortions in market decisions and interfering with orderly development

In utilyzing a percentage royalty on production, it is preferable that the royalty not apply to the value added as a result of the transportation, refining, and marketing operations. It is difficult, however, to assign a value to manganese nodules at the mine site. Accordingly it may be necessary to use a technique of valuation roughly aimed at value at the mine site. One such approach might be to value the manganese nodules at the mine site by computing the amount of each metal of commercial interest and assigning a particular percentage royalty based on a percent of the current market value of each metal. Another technique would be to assign a particular low percentage of the value of the metals as refined. This approach would be self-adjusting as market forces raised or lowered metal prices.

Another possible basis for revenue sharing would be a percentage sharing in kind of the production of maganese nodules at the mine site. Production sharing, however, could introduce additional administrative costs and could, unless carefully structured, permit price manipulation by withholding from the market or dumping on the market large quantities of stored nodules. It also gives the ISRA the producers' share of increased revenue when the price of commodities increases. Since production sharing may be an arrangement preferred by developing countries, however, it would seem preferable to retain some flexibility to accept this approach if the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned determine it to be necessary and if any such system is carefully structured to reduce administrative costs and the potential for abuse. Production sharing is not a preferable basis for revenue sharing, however, and should be viewed only as a fallback position. There may also be other basis for computing international revenues, such as rents, a percentage of profits, a two-tier system, or some other system, all of which would only be acceptable if they were so structured as to satisfy the criteria elaborated in this section.

Recommendation: That the Chairman of the US Delegation, in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned, is authorized to support the computation of financial obligations for the generation of international revenues from manganese nodule mining in seabed areas beyond national jurisdiction as a royalty on production at an economically viable rate not to exceed 10% of the value of the manganese nodules, or computed pursuant to some other acceptable method. The criteria in NDSM 62 for determining the rate of financial obligations would continue to apply, namely "...a level that will make a substantial contribution to development, render participation in the Treaty attractive to the necessary signatories, and at the same time encourage exploration and exploitation of the seabeds."

This recommendation would give the Delegation maximum flexibility to support any basis for computing financial obligations for maganese nodule mining that satisfies our objectives. If a range of rates were to be set out in the treaty, rather than a specific rate, then the Delegation would support an upper limit consistent with this section.

V. Allocation of international revenues

It may be helpful to set out the principal approach the Delegation should take on the functional uses of seabed revenues for international community purposes, whether derived from deep seabed or coastal seabed exploitation, although in this area the Delegation should retain maximum flexibility. Aside from the divergence of views on use of seabed revenues as an offset against administrative expenses of the international authority, the U.S. approach has been that revenues should go for general development assistance, assistance for enumerated types of oceans-related projects, and adjustment assistance. We are flexible on the question of whether the treaty should specify a priority among these purposes.

With respect to adjustment assistance, the Delegation should take the view that such assistance should be available to countries whose foreign exchange earnings from particular mineral exports suffer significantly as a result of seabed mineral exploitation. Eligibility might be certified by a competent international agency (perhaps IMF), and the assistance provided would be time-limited and confined to overcoming difficulties caused by this new source of supply. With these provisos, there would be flexibility on the terms of assistance offered.

Ocean users' assistance might be available to maritime countries or groups of countries within a regional or sub-regional framework which have demonstrated need to improve their marine science capacity. Such assistance would be limited to relatively small-scale technical assistance. Similarly, the Delegation might support limited assistance for community oceans projects (e.g., straits dreding) or community efforts to ensure protection of the marine environment. The Delegation should be free to decide on the basis of tactical considerations whether to propose that a fixed small percentage (possibly 5 percent) of seabed revenues be set aside for such ocean users' assistance, after the administrative costs of the international authority (if included in the U.S. position) have been met, or whether it would be preferable for the U.S. to remain silent on this issue.

In discussing the use of seabed revenues for international development assistance, the Delegation should support sound principles and practices of development assistance in order to assure optimum utilization of this new source of funds. This suggests that the U.S. Delegation should favor a system of funds distribution which makes maximum use of multilateral development agencies to program such assistance. However, in order to preserve negotiating flexibility, the Delegation would also be authorized to agree to direct allotments to recipients.

With respect to allocation of funds, if the U.S. takes a position on these issues, it should support an approach by which eligibility of countries to receive general development assistance funds would be established on the basis of broadly conceived criteria, but possibly including some appropriate preferences for the least developed or landlocked and shelflocked states.

With respect to all of these issues concerning allocation of revenue sharing funds, the Delegation should retain flexibility to determine in the light of U.S. development assistance goals the proposals and tactics which would best serve U.S. interests in the Law of the Sea negotiations.

L. Compulsory Settlement of Disputes

We do not believe any change is necessary in our instructions regarding compulsory dispute settlement or its importance to a settlement in general and in relation to the satisfactory resolution of specific issues. However certain clarifications and adjustments are needed, as recommended below.

1) Scope of dispute settlement and procedures

We have specifically proposed compulsory dispute settlement for all parts of a Law of the Sea treaty except those dealing with the territorial sea / and straits. We introduced a new proposal last summer on procedures for such dispute settlement. Most states have not, however, noticed the ommission of a reference to dispute settlement in our territorial sea and straits articles, and we have not made the point explicit while studying the issue. We have reached the conclusion that the underlying problem in straits relates to warships and state aircraft, that this problem is not limited to the territorial sea and straits, and that if such vessels and aircraft are excluded, it would be preferable to take the position that our compulsory dispute settlement proposal applies to all parts of the treaty. We can accomplish this with some fairly simple adjustments in the language of our dispute settlement proposal, and can surface the idea as part of our efforts to achieve Soviet support for our position.

Recommendation:

That compulsory dispute settlement should apply to all parts of the Law of the Sea treaty, including straits and the territorial sea, but dispute settlement would not apply to any dispute regarding a vessel or aircraft entitled to sovereign immunity under international law without the express consent of the flag State. In the negotiation we will continue to protect other military uses of the ocean, but not necessarily through specific treaty language.

2) Suits by private parties

Under the U.S. proposal, only States can normally sue each other. There are two exceptions: (1) an emergency procedure by a vessel owner to secure release of his vessel where the treaty requires prompt release (this is not an adjudication on the merits) and (2) arbitration of investment disputes on the continental margin, where a foreign company that has contracted with a coastal State may bring it to arbitration, if the State of nationality of the company has not brought an action itself and if the company has not waived its right in the investment agreement with the coastal State. States do not like to be sued by individuals outside their own courts, and we believe even these limited exceptions will be hard to negotiate. We would not wish to place more burdens on an already difficult compulsory dispute settlement negotiation, and accordingly are opposed to getting out front with supporting any further provision for private suits against States in an international tribunal.

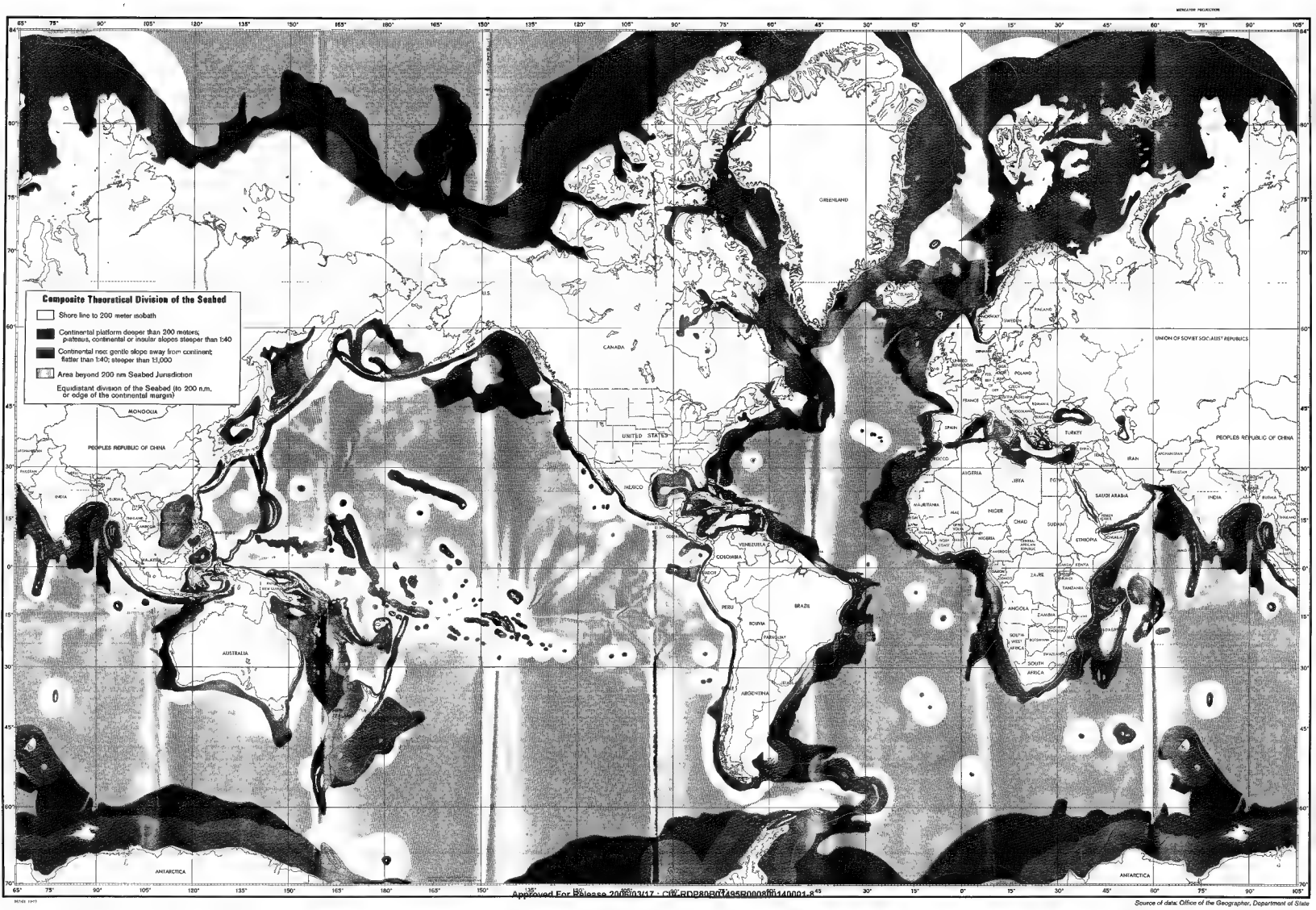
However, if other delegations propose further provisions in this regard without evoking major opposition, and if the Chairman of the Delegation in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned determine that this would not jeopardize our ability to achieve compulsory dispute settlement, we could support an expansion of the instances in which an international tribunal could hear cases between States and private parties.

On the other hand, there may be less resistance to private suits against international organizations. U.S. environmentalists strongly desire an independent right to ensure compliance with international environmental requirements through compulsory dispute settlement, as they fear the U.S. and other States might have political constraints on doing so.

We have already proposed that companies engaged in deep seabed operations be able to sue the Seabed Authority. We believe we could support the general idea of a suit by private environmentalists (or possibly UNEP or UN recognized non-governmental international environmental organizations) against the Seabed Authority to ensure compliance with environmental requirements. We are uncertain of the negotiability of such an idea, but see no compelling reasons not to advance it, and would accordingly plan to do so. However, no formal article would be introduced until we had a reasonable assessment of the reaction.

As for States, we have already proposed that they establish domestic procedures for environmental suits,

and this is about as far as we think it is possible to go.



Source of data: Office of the Geographer, Department of State

LAW OF THE SEA: THIRD UNITED NATIONS CONFERENCE

CARACAS, JUNE 20—AUGUST 29, 1974

Reprint from

The DEPARTMENT of STATE BULLETIN

Approved For Release 2006/03/17 : CIA-RDP80B01495R000800140001-8

Reprinted from The Department of State Bulletins of April 15, August 5, and September 23, 1974. The Bulletin, the official record of U.S. foreign policy, is published weekly and is available for subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at $29.80 a year, domestic.

Approved For Release 2006/03/17 : CIA-RDP80B01495R000800140001-8

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U.S. Position on Law of the Sea Reviewed

Following is a statement made by John Norton Moore, Chairman of the National Security Council Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference, before the Subcommittee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary on March 14.[1]

I welcome the opportunity to meet with this subcommittee to review the U.S. position in the law of the sea negotiations. These negotiations are among the most significant in the Nation's history, and it is essential that Congress be fully informed. I am accompanied this morning by representatives of the Commerce, Defense, Interior, Justice, and State Departments.

For the past three years, the U.N. Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, popularly known as the Seabed Committee, has been engaged in preparatory work for a comprehensive Conference on the Law of the Sea. This Third U.N. Conference on the Law of the Sea began with a two-week organizational session at U.N. Headquarters in New York December 3–15 of last year. The conference will resume this summer with a 10-week substantive session to be held in Caracas, Venezuela, from June 20 to August 29. The U.N. General Assembly has indicated that any subsequent session or sessions which may be necessary should be held no later than 1975.

The conference will be the largest plenipotentiary conference ever held, with 150 nations invited. It will also be one of the most important. The choice is whether the international community can agree on a comprehensive legal regime for the world's oceans, ushering in an era of cooperation and development, or whether the oceans will serve instead as an increasing source of conflict among nations.

In 1958 and again in 1960, at the First and Second U.N. Conferences on the Law of the Sea, the nations of the world attempted to resolve the problems associated with competing uses of the oceans. The four Geneva conventions on the law of the sea that emerged from the first conference were partially successful in codifying the international law of the sea. These conventions were the Convention on the Territorial Sea and Contiguous Zone, the Convention on the High Seas, the Convention on the Continental Shelf, and the Convention on Fishing and Conservation of the Living Resources of the High Seas.

Neither in 1958 nor in 1960, however, were nations able to agree on the breadth of the territorial sea, the extent of fisheries jurisdiction, or the outer limits of the coastal states' exclusive rights over continental shelf resources. These traditional problems were soon combined with new problems, such as the growing need for protection of the marine environment, and with uncertainties resulting from advances in technology, such as the mining of manganese nodules from the deep seabed.

With these unresolved problems as background, in December 1970 the U.N. General Assembly scheduled a comprehensive Conference on the Law of the Sea to commence in

[1] The complete transcript of the hearings will be published by the committee and will be available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

1973. The U.N. Seabed Committee, which has held six sessions since its formation, was charged with preparations for a conference to deal with a multilateral treaty regime for the breadth of the territorial seas, unimpeded transit through and over international straits, living resources, mineral resources of the continental shelf and margins, mineral resources of the deep seabed, protection of the marine environment, marine scientific research, and the settlement of disputes.

Territorial Sea and International Straits

The first of these categories is the breadth of the territorial sea and protection of transit through and over international straits. For nearly 200 years the United States has adhered to a territorial sea of three miles and has maintained that three miles is the maximum breadth recognized under international law.

In an attempt to develop worldwide consensus on the breadth of the territorial sea, the United States has proposed that, in the context of an overall satisfactory settlement, it would be willing to accept a 12-mile territorial sea. Such an extension of the territorial sea from 3 to 12 miles, however, would overlap over 100 straits between 6 and 24 miles in width which, under a 3-mile territorial sea, now include high seas.

Because of the importance of straits as avenues for international navigation, the United States has coupled its willingness to agree to a 12-mile territorial sea with recognition of a treaty right of unimpeded transit through and over straits used for international navigation. Without clear recognition of such a right of unimpeded transit, it might be possible to assert that only the right of innocent passage would apply even in such strategically important straits as Gibraltar.

The traditional doctrine of innocent passage evolved long before the advent of submarines, supertankers, and aircraft and was premised on a narrow territorial sea. Partly because of this historical beginning, the innocent passage regime does not permit submerged transit by submarines or overflight by aircraft. Moreover, there is an insufficiently agreed international understanding of what passage is "innocent." As a result there is always a danger of subjective interpretation of "innocence," which is defined as passage that is not prejudicial to the "peace, good order or security" of the coastal state. Some strait states have asserted, for example, that large petroleum tankers or nuclear-powered vessels are inherently noninnocent.

It has never made sense to apply to straits used for international navigation a legal doctrine developed to govern passage in the territorial sea. Unlike the territorial sea in general, international straits serve as access and connecting points for large areas of the oceans. As such, transit through straits is essential to meaningful exercise of the high seas rights of all states in these vast areas. Functionally, then, straits are quite distinct from other territorial sea areas. And because of their special prominence, the potential for conflict from an uncertain legal regime is greatly increased in straits.

To avoid these and other difficulties, the United States has submitted a draft treaty article that would provide a right of unimpeded navigation through and over international straits. This right is less than that presently exercised under existing high seas principles and is limited to a right in international straits to move through the strait in the normal mode for the vessel or aircraft.

The United States has also made it clear that it recognizes the legitimate safety and pollution concerns of straits states. Accordingly, we have proposed that surface ships transiting straits observe IMCO [Intergovernmental Maritime Consultative Organization] traffic separation schemes and that state aircraft normally comply with ICAO [International Civil Aviation Organization] regulations and procedures. We have also proposed that strict liability apply for damage caused by deviations from such IMCO or ICAO regulations. Our objective is to find a balance between the reasonable concerns of strait states and the need of the international community for guarantees of meaningful high seas usage.

The U.S. straits proposal is not, of course, limited to military vessels and aircraft. We are equally concerned about unimpeded transit for commercial vessels. The energy dilemma has brought widespread attention to the fact that a nation's well-being may be intimately linked to an adequate and secure supply of petroleum and other basic imports. All nations must have reliable international legal rights to bring necessary resources through international straits.

For these reasons, we have repeatedly stated that agreement on a 12-mile territorial sea must be coupled with agreement on unimpeded transit of international straits, which together constitute basic elements of our national policy.

Management Jurisdiction Over Fish Stocks

The second category of issues in the negotiations is living resources. Once the vast fish stocks of the oceans were thought to be inexhaustible. The advent of more efficient fishing techniques and a growing demand for fisheries products, however, have led to serious depletion of some stocks and have demonstrated that there is a pressing need for a rational conservation and allocation system for the living resources of the oceans.

In fact, some estimates indicate that the world community is approaching the maximum sustainable yield for many traditional species of fish within the decade. Against this background of increasing fishing pressure, it is of particular concern that a regime be established which will solve the "common pool" problem in fisheries and grant jurisdiction to manage fish stocks which is essentially coextensive with the range of those stocks.

To meet these needs the United States has proposed broad coastal state control over coastal and anadromous stocks coextensive with the range of each species and international management of highly migratory species. Under this approach, coastal nations would have broad resource-management jurisdiction over coastal stocks throughout their migratory range. The coastal nations would also have preferential harvesting rights to such coastal stocks within the allowable catch up to their fishing capacity; other nations would be entitled to harvest the remaining allowable catch.

Under this approach coastal nations would also have management jurisdiction and preferential rights over anadromous stocks such as salmon throughout their range on the high seas. Such fish spawn in the fresh waters of coastal nations, and those nations must bear the expenses necessary to provide an environment in which the stock can flourish. Moreover, the concepts of conservation and full utilization are best served for these species by harvesting close to the coast as the fish return from their high seas journey. The coastal nation is clearly in the best position to manage, conserve, and harvest these anadromous stocks.

On the other hand, highly migratory species such as tuna cover vast distances through the waters off many nations. The only practicable way to manage and conserve such highly migratory resources is through international or regional arrangements. Accordingly, our approach provides for international or regional management for such stocks. No single coastal state is in a position to conserve these stocks, and coastal state control would neither provide conservation protection nor assure coastal nations of an economically viable fishery for highly migratory species.

Continental Margin Mineral Resources

Turning to the mineral resources of the continental margins, the Continental Shelf Convention allows coastal states exclusive rights to explore and exploit these natural resources out to the 200-meter isobath, and beyond, to where the depth of the superjacent waters admits of exploitation.

Since World War II, there have been a number of technological improvements which have allowed offshore production to take place in increasingly deeper water. It is now clear that seabed resource jurisdiction could extend well beyond the 200-meter

depth, though there is still uncertainty as to the outer limit of such jurisdiction.

To meet these present realities and to encourage a more definite legal regime, the United States has stated that we are prepared to accept coastal state resource jurisdiction in a broad coastal seabed economic area. It is also our position that in this area the coastal state would have exclusive rights over offshore installations affecting its economic interests. While we have not indicated a position on the limits of such an area, the area must be subject to appropriate international standards for:

1. Protection of other uses of the area, particularly protection of navigation and other high seas freedoms;
2. Preservation of the marine environment;
3. Protection of the integrity of agreements and investments made in the area;
4. Provision for compulsory dispute settlement; and
5. Provision for revenue sharing for international community purposes.

One potential danger in these negotiations, both with respect to living and nonliving resources, is that some coastal states may attempt to acquire exclusive rights to offshore areas instead of claiming just the functional rights necessary for efficient development of the resources of these areas. One key to a successful conference will be to separate jurisdiction over resources from jurisdiction over navigational freedoms and other nonresource uses and to carefully safeguard the nonresource uses.

History has demonstrated that nations making claims to jurisdiction over high seas areas for one purpose have a tendency to expand those claims to jurisdiction for other purposes. For example, the figure of 12 miles was first used almost entirely in connection with claims for an exclusive fishing zone. Today, approximately half of the world's coastal nations claim a 12-mile territorial sea. Even the extreme 200-mile territorial sea claims seem to have their genesis largely in resource concerns. It is important, then, that the conference insure that coastal state rights adjacent to a 12-mile territorial sea are limited to those needed for resource development and that the residuum of high seas freedoms remains in the international community.

Access to Resources of Deep Seabed

Beyond the world's continental margins, a new ocean use is developing. New marine technology will shortly permit the commercial exploitation of manganese nodules from the deep ocean floor. The orderly development of this resource, however, is threatened by differing perceptions concerning the applicable legal regime. We believe that timely international agreement on an effective international regime for the development of these deep seabed resources is the best way to assure the stable investment climate needed to encourage development and to insure adequate protection of the marine environment.

Such an approach could also provide for the sharing of revenues from deep seabed mining for international community purposes, particularly assistance to developing nations. We are mindful that for this approach to be successful the international community must conclude a timely agreement and one which will genuinely promote efficient development. In this connection we have indicated that we would not view agreement as timely unless it were reached in accordance with the General Assembly schedule calling for completion of the work of the conference in 1974 or 1975 at the latest.

Similarly, for an international approach to be successful, the agreement must genuinely promote efficient development. We believe that such development will best be served by a legal order which permits access to the resources of the deep seabed under reasonable conditions that will facilitate investment. For that reason, any machinery established could not have discretion to deny access to those resources or to alter the conditions upon which security of investment depends.

Protection of the Marine Environment

A fifth category of principal issues in the negotiations is protection of the marine environment. The environment was one of the largely overlooked subjects at the 1958 and 1960 conferences. In contrast, today we are acutely aware of the need for adequate protection of the marine environment.

The Stockholm Conference on the Human Environment brought worldwide attention to the need for multilateral action on this subject. And it is widely understood that the Third U.N. Conference on the Law of the Sea must establish an adequate jurisdictional basis for protection of the marine environment against threats from all sources.

This very awareness of the need to protect the marine environment, however, may hold a subtle danger for the law of the sea unless we are careful to functionally distinguish the differing threats to the marine environment. Some coastal states have sought jurisdiction for protection of the marine environment from all sources in an area coextensive with their resource claims. With respect to pollution from exploration and exploitation of seabed resources, coastal states should have this authority subject to an obligation to observe at least minimum international standards.

But with respect to vessel-source pollution, to recognize coastal state jurisdiction to make and enforce pollution-prevention standards such as construction standards for vessels could seriously endanger freedom of navigation. There are 119 coastal nations, and if each had jurisdiction to set construction standards for vessels it could create a hodgepodge of conflicting standards. Such jurisdiction would also permit decisions on standards to be made solely by coastal nations without the careful balancing of maritime and coastal interests which would result from an international solution.

Moreover, if coastal nations were to have jurisdiction capable of affecting navigational freedom in an area as broad as 200 miles, a majority of all those coastal nations would be totally "zone locked" with no access to any ocean on which they face without being subjected to the jurisdiction of their neighbors. For these and other reasons we have strongly urged that standards for vessel-source pollution should only be set internationally through IMCO, by flag states for their own vessels, or by port states for vessels using their ports.

Marine Scientific Research

A sixth principal category of issues in the negotiations is marine scientific research. Marine research has benefited all mankind and will become even more important in the years ahead as we seek greater information needed for adequate protection and rational use of the marine environment. While international law generally recognizes freedom of research beyond the territorial sea, the existing Continental Shelf Convention subjects research concerning the continental shelf and undertaken there to the consent of the coastal state.

The Shelf Convention, though, also creates an obligation normally not to withhold consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf. There is a further proviso that the coastal state shall have the right, if it so desires, to participate or to be represented in the research and that in any event the results shall be published.

Unfortunately, the experience with the Shelf Convention regime for scientific research has not been good. Some states have arbitrarily denied consent. Others have imposed burdensome conditions on research or simply not replied to the request for permission. On the basis of this experience, we feel that it is preferable to meet the legitimate concerns of coastal nations by creating a series of obligations binding on the researching nations rather than by giving coastal nations the right to withhold consent.

Accordingly, we have proposed that a nation planning a research voyage in areas where the coastal state has resource jurisdiction should be required to provide the concerned coastal nations with reasonable

advance notification of its intent to engage in research off their shores. Researching states would certify that the research will be conducted in accordance with the treaty by a qualified institution with a view to purely scientific research.

They would also insure that the coastal state had all appropriate opportunities to participate or be represented in the research project directly or through an appropriate international institution, that all data and samples were shared with the coastal state, that significant research results were suitably published, that the coastal state was assisted in assessing the data and results, and that there was compliance with all applicable international environmental standards.

We believe this approach achieves a better balance between the interests of coastal nations and the international community than a consent regime. Similarly, we are convinced that this approach is in the common interest of all nations in better promoting a free flow of scientific knowledge about the earth we share in common.

Dispute Settlement and Entry Into Force

Finally, it is important that any comprehensive oceans law treaty also establish adequate machinery for the settlement of disputes. Machinery which would insure compulsory third-party settlement of disputes arising under the treaty would serve to minimize conflict as well as contribute to increased stability of expectations. As such, we have proposed the creation of a new oceans tribunal which would have broad jurisdiction to deal with such disputes. We particularly hope that this issue can be addressed early in the conference and that all nations will recognize their strong interest in adequate dispute settlement procedures.

To insure that advancing technology will not overtake the ability of the international community to achieve cooperative solutions, the United States has also proposed that portions of the new oceans law treaty, particularly those relating to deep seabed mining and fisheries, should go into force on a provisional basis. Provisional application of those portions of the treaty would enable a timely solution to these problems without waiting for the process of international ratification to bring the new treaty into full force. The concept of provisional application is well respected in international law and would in no way prejudge the negotiation.

The Third U.N. Conference on the Law of the Sea is, in a very real sense, engaged in drafting a basic charter for over two-thirds of the earth's surface. In drafting that charter, the challenge is to strengthen shared community rights in the oceans, including navigational freedoms and marine scientific research, while building a more definite and rational regime for the use of the resources of the oceans, for the protection of the marine environment, and for the resolution of disputes.

In meeting that challenge, the best guide is a careful functional division of ocean uses. The nature of highly migratory species requires a different jursidictional regime than that appropriate for coastal and anadromous species. Similarly, the prevention of pollution from seabed exploration and exploitation requires a different regime than that for vessel-source pollution. Conceptualistic approaches, such as those which seek to resolve the problem of international straits by assimilating them to national territory, or the problems of rational resource management by an extension of the territorial sea, have no place in a modern law of the sea.

The United States will go to Caracas prepared to negotiate a comprehensive oceans law treaty. If the conference can keep before it the fundamental need to examine each issue on its merits, it will be well on the way to a new treaty that will serve the common interests of all nations.

U.S. Defines Position on 200-Mile Economic Zone at Conference on the Law of the Sea

Following is a statement made before the Third U.N. Conference on the Law of the Sea at Caracas on July 11 by John R. Stevenson, Special Representative of the President and U.S. Representative to the conference.

Press release 201 dated July 11

Mr. President [Hamilton Shirley Amerasinghe, of Sri Lanka], distinguished representatives: First of all, I want to express on behalf of my delegation our sincere thanks to the Venezuelan Government for the splendid arrangements it made for the conference and for us. It is truly a miracle that since the invitation was extended by Venezuela and accepted by the General Assembly of the United Nations in December, all the preparations should have been carried out so efficiently with such careful attention to our needs and our comfort.[1]

Three Auguries of a Successful Conference. Mr. President, the practical and favorable working conditions which the Venezuelan Government has so graciously provided are the first of three auguries of a most successful conference. The other two are the adoption on schedule by consensus of the rules of procedure and, second, the constructive, moderate tone and the developing consensus on substance reflected in the statements given in the last two weeks.

Adoption of Rules of Procedure. The adoption of the rules of procedure on schedule by consensus was significant because these rules are a reasonable accommodation between those who wished to avoid premature voting and those who were concerned about undue delay. It was also significant, Mr. President, because it showed what inspired, firm, and sensitive leadership, as provided by you, sir, can do in reconciling differences and leading us to a generally acceptable result. You have set a high standard for our committee chairmen, but knowing and respecting all of them as I do, I am convinced that the team of Engo, Aguilar, Yankov, and Beesley [Paul Bamela Engo, of Cameroon; André Aguilar, of Venezuela; A. Yankov, of Bulgaria; J. A. Beesley, of Canada] will live up to this challenge. The conference has selected its leadership with care and with great wisdom.

Moderate and Constructive Tone of General Debate. Our delegation has noted with a growing sense of appreciation and optimism for the future the generally moderate, constructive tone of the statements made in the course of the last two weeks. Only very few delegations have departed from this general pattern, misrepresenting past events and the present positions of some delegations, including our own.

We are not here to engage in mutual recriminations. We must roll up our sleeves and get down to the practical business of drawing up a generally acceptable constitution for the oceans before disputes over conflicting uses of the same ocean space and unilateral action by individual states put such agreement out of our reach.

Growing Consensus on Limits of National and International Jurisdiction. In the course of listening to and reading the statements made during the last two weeks, I have been struck by the very large measure of agreement on the general outlines of an overall

[1] Ambassador Stevenson delivered the opening paragraph in Spanish.

settlement. Most delegations that have spoken have endorsed or indicated a willingness to accept, under certain conditions and as part of a package settlement, a maximum limit of 12 miles for the territorial sea and of 200 miles for an economic zone, and an international regime for the deep seabed in the area beyond national jurisdiction.

The United States has for a number of years indicated our flexibility on the limits of coastal state resources jurisdiction. We have stressed that the content of the legal regime within such coastal state jurisdiction is more important than the limits of such jurisdiction. Accordingly, we are prepared to accept, and indeed we would welcome, general agreement on a 12-mile outer limit for the territorial sea and a 200-mile outer limit for the economic zone, provided it is part of an acceptable comprehensive package including a satisfactory regime within and beyond the economic zone and provision for unimpeded transit of straits used for international navigation.

There remain two issues with respect to the limits of coastal state economic jurisdiction beyond 200 miles with which the conference must deal: jurisdiction over the resources of the continental margin when it extends beyond 200 miles and jurisdiction over anadromous fish such as salmon, which originate in coastal rivers but swim far out into the ocean before returning to the stream of their birth to spawn and die.

A number of states have expressed the view that, under the Continental Shelf Convention and the continental shelf doctrine of customary international law as interpreted by the International Court of Justice, they have rights over the resources of the continental margin and that they will not accept any law of the sea treaty which cuts off the rights at 200 miles.

Other states are reluctant to reduce the common heritage of mankind by recognizing coastal state jurisdiction beyond 200 miles. Still others, including the United States, have suggested an approach which gives coastal states the limit they seek but provides, through uniform payments of a percentage of the value of production, for the sharing by other states in the benefits of the exploitation of the nonrenewable resources in part of the area. This would seem to be an equitable basis for an accommodation.

With respect to salmon, the views of my country are well known. This species of fish depends for survival on the maintenance at considerable economic cost of a favorable environment in coastal rivers and streams and can effectively be conserved and managed only if caught when returning to the fresh waters of its origin in the internal waters, territorial sea, or economic zone of the host state. The very survival of this species of fish may depend on the action we collectively take at this conference.

Consensus on limits of national and international jurisdiction is conditional on the nature of coastal and international regimes within these limits. The statements to date make clear that in the case of a large number of states whose agreement is critical for an effective, generally acceptable treaty, the growing consensus on the limits of national jurisdiction—i.e., a maximum outer limit of 12 miles for the territorial sea and of 200 miles for the economic zone—is conditional on a satisfactory overall treaty package and, more specifically, on provisions for unimpeded transit of international straits and a balance between coastal state rights and duties within the economic zone.

Territorial Sea. With respect to the coastal states' right to establish a territorial sea of up to a maximum of 12 miles, it is the view of many delegations, including our own, that general recognition of this right must be accompanied by treaty provisions for unimpeded passage through, over, and under straits used for international navigation. The formulation of treaty language which will maintain a nondiscriminatory right of unimpeded transit while meeting coastal state concerns with respect to navigational safety, pollution, and security will be one of the Second Committee's most important tasks.

Economic Zone. Our willingness and that of many other delegations to accept a 200-mile outer limit for the economic zone de-

pends on the concurrent negotiation and acceptance of correlative coastal state duties.

The coastal state rights we contemplate comprise full regulatory jurisdiction over exploration and exploitation of seabed resources, nonresource drilling, fishing for coastal and anadromous species, and installations constructed for economic purposes.

The rights of other states include freedom of navigation, overflight, and other nonresource uses.

With respect to the zone as a whole, we contemplate coastal state duties to prevent unjustifiable interference with navigation, overflight, and other nonresource uses and to respect international environmental obligations. With regard to the seabeds and economic installations, this includes respect for international standards to prevent interference with other uses and to prevent pollution. With regard to fishing, this includes a duty to conserve living resources.

For the seabeds, we also contemplate a coastal state duty to observe exploration and exploitation arrangements it enters into.

For fisheries, to the extent that the coastal state does not fully utilize a fishery resource, we contemplate a coastal state duty to permit foreign fishing under reasonable coastal state regulations. These regulations would include conservation measures and provision for harvesting by coastal state vessels up to their capacity and could include the payment of a reasonable license fee by foreign fishermen. We also contemplate a duty for the coastal state and all other fishing states to cooperate with each other in formulating equitable international and regional conservation and allocation regulations for highly migratory species, taking into account the unique migratory pattern of these species within and without the zones.

The negotiation and elaboration of these duties is a critical responsibility of the Second Committee.

With respect to the related assertions by a number of states of coastal state plenary jurisdiction over scientific research and vessel-source pollution throughout the economic zone, the statements made clear that the willingness of many delegations, including my own, to negotiate on the basis of conditional acceptance of a 200-mile economic zone does not include acceptance of a requirement of coastal state consent for scientific research and coastal state control over vessel-source pollution within the zone.

For our part, we believe that, as an alternative to coastal state consent, a series of obligations should be imposed on the researcher and his flag state to respect coastal state resource interests in the zone. The obligations would include advance notification, participation, data sharing, assistance in scientific research technology and in interpretation of data, and compliance with applicable international environmental standards.

Vessel-source pollution presents a troublesome problem to the entire international community, including coastal states. At the same time, interference with freedom of navigation must be prevented. We believe international standards enforced by flag and port states, with provision for specific additional coastal state enforcement rights, can accommodate these legitimate interests. In this connection, we believe the coastal state may be authorized to take enforcement action in emergencies to prevent imminent danger of major harmful damage to its coast, or pursuant to a finding in dispute settlement that a flag state has unreasonably and persistently failed to enforce applicable international standards on its flag vessels. Of course, flag and port states would retain their right to set higher standards.

While important differences in our positions remain to be resolved in this session, we are heartened as we embark in these negotiations by the realization that most states want to insure both effective prevention of vessel-source pollution and protection of navigational freedoms.

We hope that the Third Committee can make major progress in producing agreed articles on these scientific research and pollution questions.

International Seabed Regime Beyond National Jurisdiction. Just as coastal state rights within the zone must, if we are to reach agreement, be balanced by duties, the international authority's jurisdiction over the

exploitation of the deep seabed's resources—the common heritage of mankind—must be balanced by duties that protect the rights of individual states and their nationals—most critically, in our view, their right to nondiscriminatory access under reasonable conditions to the seabed's resources on a basis that provides for the sharing of the benefits of their exploitation with other states.

The statements made do indicate that there are substantial differences among us in our interpretation and proposed implementation of the common-heritage principle. Both developing and developed countries have many aspirations concerning the common heritage; in some cases these are in harmony and in others they are not. My delegation believes that on a variety of issues which seem on the surface to present a wide gulf we are closer together than we think. Let us employ every possible method of work to insure that we find these points of harmony and proceed at once to reflect this harmony in draft articles. This, we believe, is the principal task before the First Committee at this session.

Interest of Landlocked and Geographically Disadvantaged States. Most prior speakers have referred to the desirability, indeed the necessity, of providing special benefits in a comprehensive law of the sea treaty for the landlocked and geographically disadvantaged states. The most widely supported proposals are that landlocked states' right of access to the sea and special rights in the fisheries of adjacent coastal states be recognized.

Although these recommendations do not directly affect the United States, we applaud coastal states' willingness to provide these benefits as part of an overall equitable and widely acceptable settlement, and we will of course support such provisions.

Much more controversial is the proposal of some landlocked and other geographically disadvantaged states that they participate in the benefits of the exploitation of nonrenewable resources—principally petroleum and natural gas—of the continental margin, either through a direct right of access to neighboring coastal states' continental margins or by the establishment of limits of coastal state jurisdiction that will keep some of the continental margin outside of coastal state control and within the common heritage.

It is my delegation's view that, as part of a satisfactory and widely acceptable treaty, an equitable and perhaps the most practical accommodation in this area may well be to provide for coastal states' exclusive rights in the continental margin but also to provide for international payments from mineral resources at a modest and uniform rate in the area beyond 12 miles or the 200-meter isobath, whichever is further seaward. These payments would be used primarily for developing countries, including developing landlocked and other geographically disadvantaged states. Landlocked and other geographically disadvantaged states should not expect that sharing in the benefits from deep seabed hard minerals alone could make a significant contribution to their economies.

Compulsory Dispute Settlement. Mr. President, my government believes that any law of the sea treaty is almost as easily susceptible of unreasonable unilateral interpretation as are the principles of customary international law. This is particularly true when we consider that the essential balance of critical portions of the treaty, such as the economic zone, must rest upon impartial interpretation of treaty provisions. One of the primary motivations of my government in supporting the negotiation of a new law of the sea treaty is that of making an enduring contribution to a new structure for peaceful relations among states. Accordingly, we must reiterate our view that a system of peaceful and compulsory third-party settlement of disputes is in the end perhaps the most significant justification for the accommodations we are all being asked to make.

Objectives for the Caracas Session. It is the view of my delegation that the conference should strive to adopt an entire treaty text this summer. What is required to do so is not so much technical drafting as the political will to decide a relatively small number of critical issues. Once these decisions are made, the number of treaty articles required to implement them for the territorial sea, straits, and the economic zone would not be large. The deep seabed regime will require more ar-

ticles, and the First Committee should concentrate on the preparation of agreed articles whenever this is possible.

What an electrifying and heartening development it would be for the international community, and what a deserved tribute to our Latin American host, if we could adopt an agreed text this session!

If we do not at least try to reach agreement on the treaty this summer, we may well not even achieve the basic minimum required to finish next year and in the interim prevent further unilateral action prejudicial to the success of the conference.

The minimum objective for Caracas, as we see it, is to complete treaty texts on most, if not all, of the critical articles—the territorial sea, straits, the economic zone, the seabed regime and the authority's functions, pollution from ocean uses, and scientific research. To achieve this objective, it is critical to recognize now that neither a statement of general principles nor articles which define the rights of coastal states and of the seabed authority without defining their corresponding duties would be satisfactory or, indeed, at all acceptable to a number of delegations, including our own.

As I indicated at the outset, there is already a very general agreement on the limits of the jurisdiction of coastal states and the seabed authority provided we can agree on their corresponding obligations. It is the negotiation of these duties that should be the main thrust of the negotiations this summer.

This is not, as some delegations have implied, an attempt to destroy the essential character of the economic zone—to give its supporters a juridical concept devoid of all substantive content.

On the contrary, the coastal states' exclusive control over the nonrenewable resources of the economic zone is not being challenged. In the case of fisheries, coastal state management and preferential rights over coastal and anadromous species would be recognized. The principle of full utilization will insure that renewable resources which might not otherwise be utilized will give some economic benefit to the coastal state and help meet the international community's protein requirements. Agreed international conservation and allocation standards for the rational management of tuna should in the long run benefit coastal states which seek to engage in fishing these species and would maintain the populations of the tuna that migrate through their zone. Finally, most states are prepared to agree to coastal state enforcement jurisdiction with respect to resource exploitation within the economic zone.

Gentlemen, we have come to Caracas prepared to negotiate on these critical questions. They are not merely the legal fine print to be filled in once general principles have been agreed, but the very heart of the conditional consensus we are well on the way to achieving. Years of preparation have brought us to the moment when we must complete the task that we have undertaken. We must not let this opportunity pass.

U.S. Gives Position on Seabed Regime, Scientific Research, Straits, and Economic Zone at Law of the Sea Conference

Following are statements by John R. Stevenson, Special Representative of the President and chairman of the U.S. delegation to the Third U.N. Law of the Sea Conference at Caracas, made in Committee I of the conference on July 17, in Committee III on July 19, and in Committee II on August 1; a statement by John Norton Moore, Deputy Special Representative of the President and deputy chairman of the U.S. delegation, made in Committee II on July 22; U.S. draft articles on the economic zone and continental shelf; and alternative texts of draft articles on settlement of disputes.

STATEMENT BY AMBASSADOR STEVENSON, COMMITTEE I, JULY 17

Press release 313 dated July 24

Mr. Chairman [Paul Bamela Engo, of Cameroon]: May I say at the outset what great satisfaction my delegation has in seeing you in the chair. We appreciate very much, as all delegations do, the contributions that you and your colleagues at the podium have made and continue to make to the success of our work. Your leadership, wisdom, and political skills have in many ways enabled us to reach an advanced stage of work.

As you correctly pointed out in your statement to this committee on the 10th of July, the past work of the preparatory committee has given many of us a sense of false comfort, for we have thought that the preparation of a single large and complex document was in and of itself an achievement. You told us that our task was to begin to negotiate. Indeed, you demanded it of us. Mr. Chairman, we all owe you a great debt for your persistence, because it is now obvious after more than 50 statements in this committee that you have served as the catalyst for the commencement of negotiations for which we have all waited so many years.

We have listened with great care to the statements of all delegations who have spoken before us, and it is now clear beyond any doubt that serious negotiations are occurring. Mr. Chairman, our analysis of the statements made in the last week of our work leads us to certain very specific conclusions about the nature and scope of the problems before us in Caracas, and I will turn directly to them.

The central issue in the negotiations is the extent of control by the authority over commercial development of the resources of the international seabed area. In a very real sense, the question of who will control is resolved. The authority will have the control and will exercise it through its principal organs and their subsidiary organs. The authority should contain four principal organs: an assembly, a council, an operational arm, and a dispute-settlement body. The United States, in the latter part of the Geneva session of the Seabed Committee last year, proposed the creation of a comprehensive law of the sea tribunal for disputes arising out of the interpretation or application of the law of the sea convention.[1] We would anticipate that the dispute-settlement machinery in the authority would be a more specialized organ.

Each of these principal organs will have

[1] For U.S. statements made in the July–August 1973 session of the U.N. Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, see BULLETIN of Sept. 24, 1973, p. 397.

to be given different types of powers. Broad policy guidance will come from the assembly; executive decisionmaking will be in the council, with particular reference to the implementation of the general system of exploration and exploitation. The operational arm will manage the day-to-day affairs of the authority, and the dispute-settlement procedures will help preserve the integrity of this treaty we are here to negotiate. It will be necessary to provide for some checks and balances among the organs of the authority to insure against any abuse of power. This approach may help find a common middle path to agreement on the structure of the authority and many of its powers and functions.

The questions we face are: How much control? And subject to what safeguards? And over what activities? These are clearly not easy questions, but our impression of the statements of various speakers is that the question of control is made somewhat more difficult by thinking of it in terms of control versus no control. We believe a better approach would be to recognize that certain controls are essential in the authority —these controls in a broad sense are the rights of the authority, and these rights should be accompanied by corresponding duties.

Our first task is to identify the common denominators—what types of controls do most delegations seek to repose in the authority? We have identified seven major categories which appear to command widespread support:

—First, the right of the authority to prevent degradation of the marine environment from seabed exploration and exploitation;

—Second, the right to insure that sufficient and reliable information and data are given to the authority so as to allow it independently to satisfy itself that it is receiving all benefits and income to which the treaty entitles it;

—Third, the right to impose requirements which prevent any state or person who does not have the bona fide intention of exploring and exploiting from obtaining or keeping any mining rights in the area;

—Fourth, the right to require that mining be carried out safely;

—Fifth, the right to establish the procedures and mechanisms which will insure that those provisions of our treaty which promote programs for the transfer of technology to the developing countries and provide for the training of developing country personnel be faithfully executed;

—Sixth, the right to insure that the resources of the area are not monopolized by a few countries or private entities so as to preclude developing countries from participation in the exploitation of the resources of the area when they have the technology and financial capacity to do so; and

—Seventh, the right to participate in the benefits of resource development.

Mr. Chairman, my delegation can pledge its full support to work to achieve these kinds of controls. In some cases, we believe the controls should be carefully spelled out in the treaty itself. In others, we would want to include the controls by way of a mandate to regulate in the future, provided we can agree in the treaty on standards for the regulatory machinery and a just procedure for rulemaking which will inspire the confidence of all states.

We have also listened with care to the statements of other delegations concerning the duties or obligations of the authority. Here again, we have found basically five common denominators:

—First, developing and developed countries alike have spoken out clearly for the need to insure that no state is subject to discrimination in the exercise of its rights and that no state can be deprived of a right of access to the resources if it meets the obligations imposed by the treaty—this being one of the fundamental principles of the common-heritage concept.

—Second, virtually all countries have recognized the duty to provide stable conditions of investment which will promote the development of the resources. There is wide-

spread recognition that we all depend on the creativity and initiative of a pioneering few to achieve realizable benefits for all from the extraction of the resources.

—Third, it has been wisely said by many delegations that the authority should not encumber those who extract the resources with needless regulatory interference and administrative burdens which reduce economic efficiency and thus the benefits, including the revenues, which will be available for sharing.

—Fourth, many delegations have noted the need to protect the property, including proprietary data and trade secrets, of those on whom we depend for the extraction of the resources.

—Fifth, the authority must provide facilities and institutions for the knowledge and technology which will be transferred to developing countries. Effective transfer of technology, which many have stressed, requires careful planning and the creation of new institutions of learning. In this area the authority will make one of its most significant contributions to the benefit of all mankind.

Mr. Chairman, we are gratified that most delegations have referred in their statements to the need for negotiations on the fundamental terms, conditions, and safeguards for exploration and exploitation. Indeed, one delegation suggested that this committee change its perspective quickly and begin at once to examine these fundamental matters in the hopes that by doing so we will find common ground which may reduce the differences between what appear to be widely disparate conceptual approaches. We share this belief. It was our view in the working group last summer, and it remains our view today, that the differences between the two competing conceptual approaches to the question "Who may exploit the area?" are not as serious as previous debate would have indicated and that a close study of the basic conditions of exploitation founded on what now appear to be widely supported common denominators will help us find the path to agreement.

Regrettably, Mr. Chairman, it appears that in one major area no sign of a rapprochement is yet on the horizon. A few major producers and exporters of nickel and copper have brought to our attention their belief that a problem will accrue to them from seabed nickel and copper production, the two metals of principal commercial interest in nodules. The Secretary General has, at the request of the Seabed Committee, done several useful studies of the question, including a study now before us, A/CONF.62/25. Mr. Chairman, my delegation is pleased that at an appropriate time this summer the committee will have an opportunity to study this report more fully. We believe in light of recent international experience that it will be most useful for all countries, whether developed or developing, who are consumers of these materials in either raw or manufactured form to analyze together their interests.

Mr. Chairman, a better understanding of this problem and the extent to which it has already influenced the work of this committee may help us over the few hurdles ahead of us. Several nations have made proposals in connection with economic implications which call for production and price controls or which limit access to the resources of the area. Still other proposals have been made which, while they do not appear to be directly related to economic implications, may be motivated by a desire to insure that the authority will be able to regulate production effectively. Mr. Chairman, several of these proposals can be seriously disruptive in the negotiation because they are not only capable of being used to maintain or increase prices but also can be used to deprive states of access to the resources.

In addition, if used, they may well decrease the benefits available from the sea, including the benefits to consumers everywhere from the availability of a new supply of nickel and copper and the products made from those metals. The U.N. economic studies have shown that the increases in copper demand will greatly exceed the rate of development in seabed production. Similar conclusions, to a lesser extent, hold for nickel, but

in any case nickel is largely a developed country export. The effect on manganese is speculative, and only one company that we know of has any plan to produce any manganese at all from nodules. The cobalt production of one or two developing countries may be affected. In these cases appropriate measures will have to be considered. Let us move with extreme care and not try to solve problems which in reality may be quite small and manageable with remedies more dangerous than the illness we seek to cure.

Mr. Chairman, all countries, not only the rich, but rich and poor alike, are justifiably concerned by any price increase in essential commodities. Higher prices for resources used for development are a serious matter today, causing widespread hunger and starvation in many poor countries.

We believe, Mr. Chairman, that seabed metal production should be treated on the same basis as land production. Together, the two sources will account for the global supply and meet the global demand for these metals. To draw up special restrictions for one source and not the other is equivalent to agreement by treaty to discriminate against all states who may be seabed producers. This is neither a fair nor rational approach to the disposition of the common heritage of mankind.

Mr. Chairman, my delegation places special emphasis on the decisionmaking procedures which will be used by the authority for dealing with the multitude of problems that will face the authority in its quest for control over the resources of the area. As I mentioned earlier, we believe that, in order to protect the interests of all states, decisionmaking should be dispersed throughout the organs of the authority to avoid any single organ's dominance over the machinery.

In respect of the basic resource policies of the authority, we wish to assure a special procedure which we call rulemaking. The authority will have to deal with a host of unpredictable developments. In these areas, which include environmental protection, mining safety, resource conservation, adjustments to regulatory provisions which insure diligence in exploration and deter speculation, to name only a few, we think the authority should make rules by a procedure similar to the one used by the International Civil Aviation Organization. Rules should be drafted by a specialized subsidiary organ, and after council approval, forwarded to all states for review. If after a fixed time period, say 90 days, less than one-third of the members of the authority have objected, the rules would become binding. This approach, we believe, will give maximum opportunity for expert review in the authority and in governments and avoids the risk of undue influence by one or another of the organs of the authority.

Mr. Chairman, the authority has not yet been created. We are here to create it. This is an exciting and important experiment in international cooperation. We are each prepared to agree to controls over valuable resources by an intergovernmental organization. This is a unique adventure. But it cannot succeed if we are too ambitious. We are asking all nations to have trust in an unknown body. Let us build into this treaty as many necessary procedural protections as we can to insure that those who are wary of our efforts will be satisfied with our work product. To that end, Mr. Chairman, my delegation wishes to stress the following points which we regard as most important in these negotiations:

1. The resource system we choose for the treaty must insure nondiscriminatory access to the resources of the area for all states. If the authority has the power to restrict the number of areas available for commercial development and to select among applicants, my government would not be satisfied that our access was secure and free of potential discrimination.

2. The mandate of the authority should only include control of activities in the area which are directly related to the exploration and exploitation of seabed resources.

3. The treaty should provide an appropriate system of checks and balances among the organs of the authority.

4. A carefully defined system of rulemaking should be elaborated in the treaty to in-

sure a fair and thoughtful decisionmaking process.

5. Provisions for the compulsory settlement of disputes and machinery for that purpose are essential.

6. Voting arrangements in the council of the authority should be realistic.

7. We should seek methods for accommodating the concerns of land-based producers who are developing countries if it is clear that seabed production harms their level of domestic production, but at the same time the consumers of goods made from raw materials found in the seabed must be protected from artificial price increases for such materials.

8. The provisional application of the permanent regime and machinery.

Before closing, Mr. Chairman, my delegation would like to take note of the remarks of one speaker who indicated that industrialized countries had supported a system for exploitation which would permit both licensing and direct exploitation by the authority simultaneously. He rejected such a parallel system. We support his rejection. We are here to find a single system for exploration and exploitation which will accommodate the interests and needs of all countries.

For our part, we approach the next two-week period with the hope that when the informal committee makes its report to this committee, the third reading of the regime and machinery will be concluded except for those areas which we know cannot be easily solved and will, in any case, require your own firm guidance and personal attention in the weeks and months ahead. In August we look forward to a thorough and careful elaboration by the informal committee of the new aspects of our work—the effort to study more closely the resource exploitation system and its basic conditions of operation. We will also have to deal with the unfinished business of economic implications.

We are here to negotiate, Mr. Chairman, and we are convinced that the time to do so is now.

STATEMENT BY AMBASSADOR STEVENSON, COMMITTEE III, JULY 19

Press release 317 dated July 26

Mr. Chairman [A. Yankov, of Bulgaria]: I will limit my comments today primarily to marine scientific research within the economic zone. We have previously indicated that the coastal state should have the right to authorize and regulate scientific research in the territorial sea. In the area beyond the limits of national jurisdiction, the present right to conduct research should continue, as reflected in the declaration of principles adopted by the General Assembly in 1970.[2] Similarly, it is clear that coastal states should have jurisdiction to control commercial exploration in the economic zone. The basic question is the regime for scientific research in the economic zone adjacent to the territorial sea.

If an economic zone is established at a distance of 200 miles from the coast, at least one-third of the ocean will be included in this zone of particular importance to scientists. This conference has before it two fundamental questions regarding marine science. First, we must determine whether to foster the conduct of marine science; second, we must decide how other interests are to be accommodated with respect to the conduct of marine science.

We believe that there is a consensus in this conference that marine scientific research should be encouraged. We also believe that there is a consensus that rules regarding marine science should insure that all will benefit to the fullest extent and that the interests of the coastal state in the economic zone are protected. The challenge we face is the creation of a regime which reflects this consensus.

Fostering Marine Scientific Research. Obtaining needed knowledge about the ocean is often difficult, time consuming, and expensive. Many developing countries, when considering the manifold demands on their

[2] For text of the declaration (General Assembly Resolution 2749 (XXV)), see BULLETIN of Feb. 1, 1971, p. 155.

available resources, feel that they cannot justify a substantial diversion of their scarce resources to this type of research. How then do we insure that research conducted by countries willing to utilize some of their resources for scientific investigation of the oceans benefits all countries, including developing countries? Do we increase their burden by complicating the planning and conduct of research and increasing the expense, or do we create a regime which is as conducive as possible to conducting further research in a manner designed to insure universal benefit? I believe that we all would agree that we should strive for the latter. Instead of placing burdens on research, we should insure that research is for the benefit of all and that the interests of coastal states in the economic zone are protected.

Mr. Chairman, many states have called for a coastal state right of consent for research in the zone. Few countries in the world have the long coastlines characteristic of the United States and some of its neighbors in the Western Hemisphere. Frequently, valid and useful scientific research can be conducted off these lengthy coasts even though neighboring states may refuse to grant consent for research. This is not the case, however, for many countries in other parts of the world. For example, how could any research scientist undertake a meaningful study of the Guinea Current in the Gulf of Guinea if only some of the coastal states gave consent? How can data from different areas of the world be compared in order to formulate new hypotheses about the unknown?

Mr. Chairman, marine scientific research will not be fostered by a consent regime. In many cases, such a regime will simply preclude the research or undermine the validity of the scientific findings. In others, it will make the research more expensive, with the obvious consequence that less research will be conducted. As has been often stated, oceanic processes do not respect manmade jurisdictional boundaries. Scientific investigation of such oceanic phenomena as currents generally requires research off the coasts of many countries. If several states give their consent and others withhold consent, the research most likely will simply not be conducted. Nonconsenting and consenting states alike will be denied knowledge that otherwise would have been obtained from this research.

Insuring Benefit to All. To insure that all states benefit from marine scientific research, it is important that no restrictions be placed on the wide dissemination of research findings in the open literature and in global data banks available to all. The scientific process is a gradual one, with scientists building upon each others' research. It is a rare if not unique phenomenon that one research project provides the needed insight for a major scientific breakthrough; it is equally rare that the researcher himself is the one who obtains the most benefit from the research which has been conducted.

Mr. Chairman, we must insure that scientific knowledge flows not only to the coastal state and the researching state but to all mankind. To do otherwise would remove essential building blocks of science and widen the gap between developing and developed countries.

Protection of the Interests of Coastal States. As stated previously, oceanic processes do not respect manmade jurisdictional boundaries. Ideally, therefore, a more complete understanding of such oceanic processes could be obtained if marine scientists were free to carry out scientific research anywhere in the seas without restraints or restrictions. Balanced against this interest, however, are the legitimate rights and interests of coastal states. Last summer we set forth a draft treaty proposal for research in the economic zone. That proposal does not call for freedom of scientific research, nor does it deny the rights of the coastal state. Rather, our proposal sets forth a series of coastal state rights. These rights are expressed in the following obligations with which a researcher must comply if he wishes to conduct research in the zone:

—Advance notification of the proposed research, including a detailed description of the research project;

—A right of the coastal state to participate directly or through an international organization of its choice;

—Sharing of all data and samples with the coastal state;

—Assistance to the coastal state in interpreting the results of the research project in a manner that is relevant to the coastal state;

—Publication as soon as possible of the significant research results in an open, readily available scientific publication;

—Compliance with all applicable international environmental standards; and

—Flag-state certification that the research will be conducted in accordance with the treaty by a qualified institution with a view to purely scientific research.

We have tried in the listing of obligations to meet the legitimate concerns of coastal states. We studied national laws of other states in compiling the list. Perhaps we have not been successful in phrasing or listing every obligation that should be included. If there are other obligations that some feel should be included, these obligations should be discussed and, if found meritorious, included in the treaty.

I should like to explain briefly why we believe that these obligations will protect the interests of the coastal state. Advance notification will apprise the coastal state of the proposed research, provide background information on the need for, and the steps leading up to, the research project, and allow the coastal state to plan its participation in the research project. By participating, the coastal state can satisfy itself that the activities undertaken are in fact scientific and maximize the benefit it receives from the research conducted.

Not only do we propose sharing of all data and samples with the coastal state, but also we recognize that some coastal states may desire assistance in interpreting the data and samples received. This proposal provides not only that the flag state must assist the coastal state in interpreting the data resulting from that research project, but also that it must provide such assistance in interpretation in a manner that is relevant to the coastal state.

Open publication of the research results will insure that the research benefits all mankind. It will also provide additional assurance that the research is not commercially oriented, since those who collect proprietary data rarely are willing to share such data with their competitors.

To insure protection of the environment of the economic zone, researchers would be required to comply with all applicable international environmental standards. In addition, we recognize that drilling into the continental margin for scientific purposes can create both an environmental threat and resource management problems. We therefore proposed before Subcommittee II last summer, in articles on the coastal seabed economic area, that coastal states have the exclusive right to authorize and regulate all forms of drilling, including scientific drilling.

We also believe that the requirement that the flag state certify that the research is conducted by a qualified institution with a view to purely scientific research is a meaningful protection. As evidenced by these negotiations, countries such as my own which conduct a large amount of research have a great interest in protecting the right to conduct marine scientific research, and we believe that all countries will exercise great caution in granting such certification.

Finally, our articles require that those "conducting scientific research shall respect the rights and interests of the coastal State" in its exercise of jurisdiction in the zone. Clearly, the researcher cannot unreasonably interfere with fishing or seabed exploitation activities conducted by the coastal state in the zone. Additional protection for the resource activities of the coastal state will be provided by the opportunity to participate in the research. Moreover, under the coastal seabed economic area articles tabled last summer in Subcommittee II, coastal states may establish safety zones around installa-

tions. Research vessels, of course, would be required to respect such safety zones.

Mr. Chairman, under our proposal, if the researcher meets these obligations, he may conduct the research without coastal state consent. What happens, however, if there is a dispute as to whether they have in fact been met? Coastal states should not be without a remedy if they believe that all the prerequisites for the conduct of research have not been met. There should be an efficient mechanism available through compulsory dispute-settlement procedures to the coastal state and the researching state for the rapid resolution of such disputes. We welcome views on ways that these interests can best be balanced.

As I stated at the outset, we believe that the approach in our draft articles provides a balance of rights and duties which protects the interests of coastal states while fostering the conduct of marine scientific research and insuring that such research benefits all.

Technology Transfer. Some have suggested that a coastal state right of consent could be used as a bargaining lever to obtain technology transfer. We do not believe that any useful technology transfer in marine science would result through such a mechanism. First, to be meaningful, technology transfer in marine science must be regular and sustained and not as a result of negotiations with the occasional research vessel which seeks permission. As previously pointed out, a consent regime will increase research costs, thereby reducing the amount of research which is conducted and the attendant transfer of marine science technology. Second, neither scientific objectives nor the objectives of developing countries will be served if the cost of research becomes a major factor in determining where research will be conducted. For our part, we believe that transfer of marine science technology can best be accomplished through a multilateral effort, not through ad hoc bargaining for consent to do research.

In a statement before Subcommittee III of the Seabed Committee in 1972, we stated our "willingness, in principle, to commit funds to support multilateral efforts in all appropriate international agencies with a view toward creating and enlarging the ability of developing states to interpret and use scientific data for their economic benefit and other purposes; to augment their expertise in the field of marine science research; and to have available scientific research equipment including the capability to maintain and use it."

In that statement, we emphasized that these funds would be in addition to financial efforts by the international seabed authority. We reemphasize our willingness today to participate in such programs.

Mr. Chairman, I have tried to set forth briefly the views of my delegation concerning marine scientific research. As I said at the outset, we believe that there is an emerging consensus that scientific inquiry should be encouraged. We remain convinced that the best way to accomplish this is to insure that the individual scientist is as unfettered as possible and that the most logical means for meeting the legitimate interests of coastal states is through a series of internationally agreed obligations on the researcher. We look forward to working with others at this conference in achieving these goals.

STATEMENT BY MR. MOORE, COMMITTEE II, JULY 22

Press release 326 dated August 8

Mr. Chairman [Andres Aguilar, of Venezuela]: In accordance with your guidelines for our work, my delegation would like to take this opportunity to comment on proposals made by several states on the issue of straits and, in this connection, to devote particular attention to the concerns of states bordering straits with respect to security, safety of navigation, and prevention of pollution.

The U.S. delegation has stated on numerous occasions the central importance that we attach to a satisfactory treaty regime

of unimpeded transit through and over straits used for international navigation. Indeed, for states bordering as well as states whose ships and aircraft transit such straits, there could not be a successful Law of the Sea Conference unless this question is satisfactorily resolved. The inadequacies of the traditional doctrine of innocent passage—a concept developed not for transit through straits but for passage through a narrow belt of territorial sea—are well known.

We are appreciative of the strong trend in the debates as well as several proposals recently introduced in this committee which reflect an understanding of the importance of navigation and overflight through straits for the global flow of trade and communications and for a stable and peaceful world order. These proposals also reflect that there need be no conflict between the interests of states transiting and states bordering straits. While unimpeded transit of straits used for international navigation is vital to achieving a successful treaty, we can and must also protect the interests of states bordering straits.

The proposals made reflect the fact that three categories of concern have been most frequently expressed by states bordering straits. They are security, safety of navigation, and prevention of pollution.

With respect to the first of these concerns, the security of states bordering straits, we should remember that unimpeded transit is a right of transit, not a right to engage in activities inimical to the security of these states. It is solely a right of the transiting ship or aircraft to transit the strait; that is, to enter the strait, pass through or over in the normal mode using customary navigational routes and applicable traffic-separation schemes, and then to exit the strait. In this regard, it should be borne in mind that the right of unimpeded transit is a substantial restriction on present high seas freedoms. To make this clear, we agree that the chapter on passage of straits used for international navigation might specify that the right of unimpeded transit is solely for the purpose of continuous and expeditious transit of the strait.

To insure that unimpeded transit will be consistent with the security interests of states bordering straits, the treaty should require that ships and aircraft in transit refrain from any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of a state bordering the strait. Situations of actual hostilities are of course, like all conflict settings, governed by the overriding norms of the United Nations Charter.

It should also be noted with respect to security concerns that straits are confined waters and prudent seamen will want to pass through them as quickly as circumstances permit. As a practical matter, a strait is a most unlikely place for any threats to security against a state bordering the strait.

The second category of concern is safety of navigation. Here, too, it is possible to achieve a balance which will fully protect the interests of states whose ships and aircraft transit a strait and the interests of states bordering the strait.

The first need is to insure that transiting vessels and aircraft comply with applicable international safety regulations. The proposal contained in articles recently introduced by the United Kingdom meets this need. It provides that "ships in transit shall comply with generally accepted international regulations, procedures and practices for the safety of navigation at sea, including the international regulations for preventing collisions at sea." We support this proposal.

With respect to aircraft, we believe that civil aircraft in transit should comply with the high seas standards, recommended practices, and procedures established by the International Civil Aviation Organization under the Chicago Convention. State aircraft, which are not governed by these rules, should normally respect them and should at all times operate with due regard for the safety of navigation.

Because of the importance of traffic-separation schemes for safety of navigation in crowded straits, it would seem useful to encourage states bordering straits to propose traffic-separation schemes where necessary to promote the safe passage of ships. Such schemes could then go into effect after approval by the competent international organization.

The third category of concern is prevention of pollution. All states recognize the importance of fully protecting the marine environment. In this connection, the proposal made by the United Kingdom to require that ships in transit comply with generally accepted international regulations, procedures, and practices for the prevention and control of pollution from ships is an important one. It should also be noted that the new international discharge standards for areas close to the coast are very strict.

The United States is of the view that, subject to appropriate safeguards and the usual exemption for ships and aircraft entitled to sovereign immunity, states bordering straits should be able to enforce against violations occurring within the strait for deviation from internationally approved traffic-separation schemes. Such deviations may seriously threaten the marine environment within straits.

With respect to both safety and pollution concerns in straits, it is also important to make adequate provisions for compensation should damage result despite the most rigorous prevention requirements. The recent liability and fund conventions for compensation for damage caused by pollution from oil are a great step forward in this regard. And the provisions concerning liability in the United Kingdom articles and in A/CONF.62/C.2/L.11, jointly prepared by a number of Eastern European states, also seem worthy of study.

Similarly, with respect to both safety and pollution concerns in straits, some straits, because of depth or other navigational or environmental limitations, will require special standards in addition to those universally adopted. To meet this need, we would welcome states bordering a strait recommending to the appropriate international organization for approval any special safety or pollution standards which they feel are required. In this way, states bordering the strait have the predominant role in formulating such special standards, but at the same time the international community's interest is also fully protected.

Mr. Chairman, my delegation is also pleased that most of the recently introduced proposals concerning transit of straits include the essential element of transit by aircraft as well as ships. There have, however, been suggestions that questions of overflight of aircraft are not matters of oceans law and need not be dealt with in the Law of the Sea Conference. It should be recalled that the question of overflight was inseparably linked with the law of the sea in the 1958 Conventions on the High Seas and on the Territorial Sea and Contiguous Zone.

Moreover, since the breadth of the territorial sea will be decided by the conference, the question of overflight cannot be avoided unless those states making this suggestion are willing to forgo sovereignty over the airspace above the territorial sea. The subject is clearly before the Law of the Sea Conference, as the List of Subjects and Issues approved by the Seabed Committee specifically refers in items 2.5 and 6.3 to the freedom of overflight.

All aircraft, civil as well as state, now have a right of overflight within high seas areas, including high seas within straits used for international navigation. The Chicago Convention reflects this right by differentiating between flights over territory, which are subject to the consent of the state in question, and flights over the high seas, which are not. An extension of the territorial sea to 12 miles by a new law of the sea treaty would, unless accompanied by adequate provision for overflight of straits, alter this basic right of overflight through a large number of straits used for international

navigation which would be overlapped by a 12-mile territorial sea.

It is insufficient in this regard to rely on the Chicago Convention for the protection of this vital overflight right of straits overlapped by a territorial sea. For one thing, not all states have become parties to the convention. Secondly, with respect to overflight of territorial waters by civil aircraft, the convention permits states in certain circumstances to restrict or suspend overflight. Finally, the provisions of the convention do not apply to overflight by state aircraft. These state aircraft include a wide variety of aircraft important to the effective functioning of states, including aircraft specialized for weather, diplomatic, customs and immigration, search and rescue, and military uses.

Mr. Chairman, unimpeded transit of straits used for international navigation, and the interests of states bordering straits in security, safety of navigation, and prevention of pollution are complementary. All states share an interest in insuring each of these goals. It is fortunate, then, that as proposals recently introduced before this committee make clear, the conference need not make a choice between them. Rather, the task is to prepare articles which will fully protect the interests of all states.

STATEMENT BY AMBASSADOR STEVENSON, COMMITTEE II, AUGUST 1

Press release 337 dated August 22

Mr. Chairman: In plenary, my delegation indicated its willingness to support a 200-mile economic zone as part of an overall acceptable law of the sea treaty.[3] In this connection, we would like to make some preliminary comments on the portions of the nine-power working paper dealing with the economic zone (document A/CONF.62/L.4).

The economic zone is a new concept designed to reconcile the primary interests of the coastal state in resources with the primary interests of all states in navigation and other uses.

Viewed in this light, the economic zone would be the sum total of the judgments of the international community as to the most appropriate balance between coastal and international interests. Achieving this balance presents a very special problem concerning our mode of work. If we are to capture in treaty articles the essence of the balance, we must not attempt to do it in a few general articles—only a series of carefully drafted articles will accomplish this delicate task.

My delegation would welcome comments on its proposals for the economic zone based on the specific interests of states and the international community. But we cannot negotiate in the face of conceptual arguments that one or another idea is incompatible with the "essential character" of the zone. Arguments based on deductive reasoning from an abstract concept can only move us further apart.

One of the most serious restraints in the history of the law of the sea on the expansion of coastal state jurisdiction over resources has been the concern that this jurisdiction would, with time, become territorial in character. In the Seabed Committee, the proponents of the economic zone argued that it could be constructed with sufficient safeguards to prevent such a result. Having tentatively accepted those arguments here, we are presented with a proposal in document L.4 that tends to confirm some of our serious misgivings. For us and for others, the "specific articles" that the cosponsors left out largely spell the difference between an acceptable and unacceptable result. Accordingly, we would be unable to express even tentative acceptance of the document as a basis of negotiation now, or in any final action of this session, if this means exposing ourselves to a process of fruitless deductive reasoning from article 12 or, worse still, a future argument that a consensus on such texts was evidence of new general international law.

[3] For a statement made by Ambassador Stevenson on July 11, see BULLETIN of Aug. 5, 1974, p. 232.

Having said this, let me reiterate with respect to article 12(a) that we contemplate full coastal state regulatory jurisdiction over exploration and exploitation of seabed resources and fishing within the economic zone with special treatment for anadromous species and for highly migratory species.

The question of fisheries jurisdiction, a central aspect of the economic zone, illustrates the difficulties inherent in a deductive approach. My delegation supports the inclusion of coastal state duties to insure the conservation and full utilization of fish stocks under coastal state laws and regulations and, as stated above, special treatment for anadromous and highly migratory species of fish. We believe our proposals will stimulate fisheries investment in the coastal state and that additional provisions can be discussed to this end. However, we agree with the distinguished observer from the Food and Agriculture Organization in supporting international cooperation in fisheries management and would encourage states to enter into appropriate treaty and organizational arrangements, but we are not urging a mandatory general transfer of coastal state fisheries management jurisdiction to multilateral commissions. We believe these points should be negotiated on their merits and that such negotiations will facilitate agreement on the establishment and exercise of coastal state fisheries jurisdiction in the zone.

Recognizing that coastal state resource interests can be seriously affected by certain other activities, we have also proposed an exclusive coastal state right to authorize and regulate all installations for economic purposes and all drilling, whether or not such installations or drilling are related to exploration and exploitation of resources.

We support the inclusion of environmental rights and duties with respect to installation and seabed resource activities. We also support some revenue sharing from mineral resources and provisions on the integrity of investments in the development of such resources.

We support compulsory dispute-settlement procedures to prevent an abuse of treaty rights, not to second-guess the coastal state in exercising its rights in the economic zone.

We recognize that specific negotiation is required on these and other aspects of our proposals. We would hope the cosponsors of document L.4, in referring to specific articles, agree that such negotiation should be our main task.

The remaining question concerns activities other than those I have discussed, subject of course to the provisions of the convention regarding pollution and scientific research. Articles 14, 15, and 17 do not make it sufficiently clear that all high seas freedoms recognized by the general principles of international law are preserved, subject to, and except as otherwise provided in, the convention. It is also not sufficiently clear that the enjoyment of these freedoms is on an equal footing with—not subject to—the enjoyment by the coastal state of its rights in the zone. We understand this to be the intention of the articles and trust this is merely a drafting problem.

Mr. Chairman, while these remarks are also applicable to other proposals, including that of the delegation of Nigeria (document A/CONF.62/C.2/L.21), we believe the comprehensive structure of the Nigerian proposal should commend itself to the entire committee. Despite serious substantive problems on some points, we can see in that proposal a way for you to guide this committee toward the achievement of its goals. We are also encouraged by the remarks of the distinguished Representative of Nigeria on matters that remain to be dealt with and look forward to detailed elaboration of those ideas.

In conclusion, let me express the hope that the sponsors of document L.4, L.21, and other proposals will be able to accept these remarks as constructive in character and in the spirit of the famous French phrase, "Yes, but . . . ." However, I urge you, Mr. Chairman and others, not to underestimate the critical importance of the "but" to my delegation.

U.S. DRAFT ARTICLES ON ECONOMIC ZONE AND CONTINENTAL SHELF

U.N. doc. A/CONF. 62/C.2/L.47 dated August 8

UNITED STATES OF AMERICA: DRAFT ARTICLES FOR A CHAPTER ON THE ECONOMIC ZONE AND THE CONTINENTAL SHELF [4]

PART I. THE ECONOMIC ZONE

A. COASTAL STATE JURISDICTION

Article 1. General

1. The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the economic zone, the jurisdiction and the sovereign and exclusive rights set forth in this chapter for the purpose of exploring and exploiting the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters.

2. The coastal State exercises in the economic zone the other rights and duties specified in this Convention, including those with regard to the protection and preservation of the marine environment and the conduct of scientific research.[5]

3. The exercise of these rights shall be in conformity with and subject to the provisions of this Convention, and shall be without prejudice to the provisions of part III of this chapter.

Article 2. Limits

The outer limit of the economic zone shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea.

Article 3. Artificial Islands and Installations

1. The coastal State shall have the exclusive right to authorize and regulate, in the economic zone, the construction, operation and use of artificial islands and installations for the purpose of exploration or exploitation of natural resources, or for other economic purposes, and of any installation which may interfere with the exercise of the rights of the coastal State in the economic zone.

2. The coastal State may, where necessary, establish reasonable safety zones around such off-shore installations in which it may take appropriate measures to ensure the safety both of the installations and of navigation.

3. The provisions of article 28 shall apply, *mutatis mutandis*, to such artificial islands and installations.

Article 4. Drilling

The coastal State shall have the exclusive right to authorize and regulate drilling for all purposes in the economic zone.

Article 5. Right to Protect the Marine Environment

In exercising its rights with respect to installations and sea-bed activities in the economic zone, the coastal State may establish standards and requirements for the protection of the marine environment additional to or more stringent than those required by applicable international standards.

Article 6. Coastal State Measures

With respect to activities subject to its sovereign or exclusive rights, the coastal State may take such measures in the economic zone as may be necessary to ensure compliance with its laws and regulations in conformity with the provisions of this Convention.

B. INTERNATIONAL STANDARDS AND DUTIES

Article 7. Navigation, Overflight, and Other Rights

Nothing in this chapter shall affect the rights of freedom of navigation and overflight, and other rights recognized by the general principles of international law, except as otherwise specifically provided in this Convention. The provisions of this article do not apply to activities for which the authorization of the coastal State is required pursuant to this Convention.

Article 8. Unjustifiable Interference

1. The coastal State shall exercise its rights and perform its duties in the economic zone without unjustifiable interference with navigation or other uses of the sea, and ensure compliance with applicable international standards established by the appropriate international organizations for this purpose.

2. In exercising their rights, States shall not unjustifiably interfere with the exercise of the rights or the performance of the duties of the coastal State in the economic zone.

Article 9. Duty to Protect the Marine Environment

In exercising its rights with respect to installations and sea-bed activities, the coastal State shall take all appropriate measures in the economic zone for the protection of the marine environment from pollution, and ensure compliance with international minimum standards for this purpose established in ac-

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[4] These articles, which are presented as a basis for negotiation subject to agreement on other basic questions of the law of the sea, replace in their entirety draft articles on fisheries and the coastal sea-bed economic area contained in documents A/AC.138/SC.II/L.9 [*Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21* (A/8721, pp. 175–179)] and A/AC.138/SC.II/L.35 [*ibid., Twenty-eighth Session, Supplement No. 21* (A/9021, vol. III, pp. 75–77)].

[5] Detailed provisions on these subjects are to be set forth in the chapters of the Convention on scientific research and pollution.

cordance with the provisions of chapter — (pollution).

Article 10. Dispute Settlement

Any dispute with respect to the interpretation or application of this chapter shall, if requested by any party to the dispute, be resolved by the compulsory dispute settlement procedures contained in chapter —.

PART II. FISHERIES

Article 11. General

The coastal State exercises exclusive rights for the purpose of regulating fishing within the economic zone, subject to the provisions of these articles.

Article 12. Conservation

1. The coastal State shall ensure the conservation of renewable resources within the economic zone.

2. For this purpose, the coastal State shall apply the following principles:

(a) allowable catch and other conservation measures shall be established which are designed, on the best evidence available to the coastal State, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, taking into account relevant environmental and economic factors, and any generally agreed global and regional minimum standards;

(b) such measures shall take into account effects on species associated with or dependent upon harvested species and at a minimum, shall be designed to maintain or restore populations of such associated or dependent species above levels at which they may become threatened with extinction;

(c) for this purpose, scientific information, catch and fishing effort statistics, and other relevant data shall be contributed and exchanged on a regular basis;

(d) conservation measures and their implementation shall not discriminate in form or fact against any fisherman. Conservation measures shall remain in force pending the settlement, in accordance with the provisions of chapter —, of any disagreement as to their validity.

Article 13. Utilization

1. The coastal State shall ensure the full utilization of renewable resources within the economic zone.

2. For this purpose, the coastal State shall permit nationals of other States to fish for that portion of the allowable catch of the renewable resources not fully utilized by its nationals, subject to the conservation measures adopted pursuant to article 12, and on the basis of the following priorities:

(a) States that have normally fished for a resource, subject to the conditions of paragraph 3;

(b) States in the region, particularly land-locked States and States with limited access to living resources off their coast; and

(c) all other States.

The coastal State may establish reasonable regulations and require the payment of reasonable fees for this purpose.

3. The priority under paragraph 2 (a) above shall be reasonably related to the extent of fishing by such State. Whenever necessary to reduce such fishing in order to accommodate an increase in the harvesting capacity of a coastal State, such reduction shall be without discrimination, and the coastal State shall enter into consultations for this purpose at the request of the State or States concerned with a view to minimizing adverse economic consequences of such reduction.

4. The coastal State may consider foreign nationals fishing pursuant to arrangements under articles 14 and 15 as nationals of the coastal State for purposes of paragraph 2 above.

Article 14. Neighbouring Coastal States

Neighbouring coastal States may allow each others' nationals the right to fish in a specified area of their respective economic zones on the basis of reciprocity, or long and mutually recognized usage, or economic dependence of a State or region thereof on exploitation of the resources of that area. The modalities of the exercise of this right shall be settled by agreement between the States concerned. Such right cannot be transferred to third parties.

Article 15. Land-locked States

Nationals of a land-locked State shall enjoy the privilege to fish in the neighbouring area of the economic zone of the adjoining coastal State on the basis of equality with the nationals of that State. The modalities of the enjoyment of this privilege shall be settled by agreement between the parties concerned.

Article 16. International Co-operation Among States

1. States shall co-operate in the elaboration of global and regional standards and guidelines for the conservation, allocation, and rational management of living resources directly or within the framework of appropriate international and regional fisheries organizations.

2. Coastal States of a region shall, with respect to fishing for identical or associated species, agree upon the measures necessary to co-ordinate and ensure the conservation and equitable allocation of such species.

3. Coastal States shall give to all affected States timely notice of any conservation, utilization and al-

location regulations prior to their implementation, and shall consult with such States at their request.

Article 17. Assistance to Developing Countries

An international register of independent fisheries experts shall be established and maintained by the Food and Agriculture Organization of the United Nations. Any developing State party to the Convention desiring assistance may select an appropriate number of such experts to serve as fishery management advisers to that State.

Article 18. Anadromous Species

1. Fishing for anadromous species seaward of the territorial sea (both within and beyond the economic zone) is prohibited, except as authorized by the State of origin in accordance with articles 12 and 13.

2. States through whose internal waters or territorial sea anadromous species migrate shall cooperate with the State of origin in the conservation and utilization of such species.

Article 19. Highly Migratory Species

Fishing for highly migratory species shall be regulated in accordance with the following principles:

A. *Management.* Fishing for highly migratory species listed in Annex A within the economic zone shall be regulated by the coastal State, and beyond the economic zone by the State of nationality of the vessel, in accordance with regulations established by appropriate international or regional fishing organizations pursuant to this article.

(1) All coastal States in the region, and any other State whose flag vessels harvest a species subject to regulation by the organization, shall participate in the organization. If no such organization has been established, such States shall establish one.

(2) Regulations of the organization in accordance with this article shall apply to all vessels fishing the species regardless of their nationality.

B. *Conservation.* The organization shall, on the basis of the best scientific evidence available, establish allowable catch and other conservation measures in accordance with the principles of article 12.

C. *Allocation.* Allocation regulations of the organization shall be designed to ensure full utilization of the allowable catch and equitable sharing by member States.

(1) Allocations shall take into account the special interests of the coastal State within whose economic zone highly migratory species are caught, and shall for this purpose apply the following principles within and beyond the economic zone: [insert appropriate principles].

(2) Allocations shall be designed to minimize adverse economic consequences in a State or region thereof.

D. *Fees.* The coastal State shall receive reasonable fees for fish caught by foreign vessels in its economic zone, with a view to making an effective contribution to coastal State fisheries management and development programmes. The organization shall establish rules for the collection and payment of such fees, and shall make appropriate arrangements with the coastal State regarding the establishment and application of such rules. In addition, the organization may collect fees on a non-discriminatory basis based on fish caught both within and outside the economic zone for administrative and scientific research purposes.

E. *Prevention of Interference.* The organization shall establish fishing regulations for highly migratory species in such a way as to prevent unjustifiable interference with other uses of the sea, including coastal State fishing activities, and shall give due consideration to coastal State proposals in this regard.

F. *Transition.* Pending the establishment of an organization in accordance with this article, the provisions of this article shall be applied temporarily by agreement among the States concerned.

G. *Interim Measures.* If the organization or States concerned are unable to reach agreement on any of the matters specified in this article, any State party may request, on an urgent basis, pending resolution of the dispute, the establishment of interim measures applying the provisions of this article pursuant to the dispute settlement procedures specified in chapter —. The immediately preceding agreed regulations shall continue to be observed until interim measures are established.

Article 20. Marine Mammals

Notwithstanding the provisions of this chapter with respect to full utilization of living resources, nothing herein shall prevent a coastal State or international organization, as appropriate, from prohibiting the exploitation of marine mammals.

Article 21. Enforcement

1. The coastal State may, in the exercise of its rights under this chapter with respect to the renewable natural resources, take such measures, including inspection and arrest, in the economic zone, and, in the case of anadromous species, seaward of the economic zones of the host State and other States, as may be necessary to ensure compliance with its laws and regulations, provided that when the State of nationality of a vessel has effective procedures for the punishment of vessels fishing in violation of such laws and regulations, such vessels shall be delivered promptly to duly authorized officials of the State of nationality of the vessel for legal proceedings, and may be prohibited by the coastal State from any fishing in the zone pending disposition of the case. The State of nationality shall within six months after such delivery notify the coastal State of the disposition of the case.

2. Regulations adopted by international organizations in accordance with Article 19 shall be enforced as follows:

(a) Each State member of the organization shall make it an offence for its flag vessels to violate such regulations, and shall co-operate with other States in order to ensure compliance with such regulations.

(b) The coastal State may inspect and arrest foreign vessels in the economic zone for violating such regulations. The organization shall establish procedures for arrest and inspection by coastal and other States for violations of such regulations beyond the economic zone.

(c) An arrested vessel of a State member of the organization shall be promptly delivered to the duly authorized officials of the flag State for legal proceedings if requested by that State.

(d) The State of nationality of the vessel shall notify the organization and the arresting State of the disposition of the case within six months.

3. Arrested vessels and their crew shall be entitled to release upon the posting of reasonable bond or other security. Imprisonment or other forms of corporal punishment in respect of conviction for fishing violations may be imposed only by the State of nationality of the vessel or individual concerned.

Part III. The Continental Shelf

Article 22. General

1. The coastal State exercises sovereign rights over the continental shelf for the purpose of exploring and exploiting its natural resources.

2. The continental shelf is the sea-bed and subsoil of the submarine areas adjacent to and beyond the territorial sea to the limit of the economic zone or, beyond that limit, throughout the submerged natural prolongation of the land territory of the coastal State to the outer limit of its continental margin, as precisely defined and delimited in accordance with article 23.

3. The provisions of this article are without prejudice to the question of delimitation between adjacent and opposite States.

Article 23. Limits

(Provisions are needed for locating and defining the precise limit of the continental margin, and to provide a precise and permanent boundary between coastal State jurisdiction and the international sea-bed area.)

Article 24. Natural Resources

The natural resources referred to in article 22 consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 25. Superjacent Waters

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters, or that of the air space above those waters.

Article 26. Application of Economic Zone Provisions

The provisions of part 1 of this chapter shall apply, *mutatis mutandis*, to the sea-bed and subsoil of the continental shelf.

Article 27. Duties with Respect to Non-Renewable Resources

In the exercise of its rights with respect to the non-renewable resources of the continental shelf, the coastal State:

(a) shall comply with legal arrangements which it has entered into with other contracting States, their instrumentalities, or their nationals in respect to the exploration or exploitation of such resources and shall not take property of such States, instrumentalities or nationals except for a public purpose on a non-discriminatory basis and with adequate provisions at the time for prompt payment of just compensation in an effectively realizable form, and

(b) shall pay, in respect of the exploitation of such non-renewable resources seaward of the territorial sea or the 200-metre isobath, whichever is farther seaward (insert formula), to be used as specified in article 1, for international community purposes, particularly for the benefit of developing countries.

Article 28. Installations

1. The coastal State shall have the exclusive right to authorize and regulate on the continental shelf the construction, operation and use of artificial islands and installations for the purpose of exploration or exploitation of natural resources or for other economic purposes, and of any installation which may interfere with the exercise of the rights of the coastal State.

2. The coastal State may, where necessary, establish reasonable safety zones around such off-shore installations in which it may take appropriate measures to ensure the safety both of the installations and of navigation. Such safety zones shall be designed to ensure that they are reasonably related to the nature and function of the installation. Ships of all nationalities must respect these safety zones.

3. The breadth of the safety zones shall be determined by the coastal State and shall conform to applicable international standards in existence or to be established by the Inter-Governmental Maritime Consultative Organization regarding the establishment and breadth of safety zones. In the absence of such additional standards, safety zones around installations for the exploration and exploitation of

non-renewable resources of the sea-bed and subsoil may extend to a distance of 500 metres around the installations, measured from each point of their outer edge.

4. Due notice must be given of the construction of any such installations and the extent of safety zones, and permanent means for giving warning of the presence of such installations must be maintained. Any such installations which are abandoned or disused must be entirely removed.

5. States shall ensure compliance by vessels of their flag with applicable international standards regarding navigation outside the safety zones but in the vicinity of such off-shore installations.

6. Installations and safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. For the purpose of this section, the term "installations" refers to artificial off-shore islands, facilities, or similar devices, other than those which are mobile in their normal mode of operation at sea. Installations shall not afford a basis for a claim to a territorial sea or economic zone, and their presence does not affect the delimitation of the territorial sea or economic zone of the coastal State.

Article 29. Submarine Cables and Pipelines

1. Subject to its right to take reasonable measures for the exploration and exploitation of the natural resources of the continental shelf, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

2. Nothing in this article shall affect the jurisdiction of the coastal State over cables and pipelines constructed or used in connexion with the exploration or exploitation of its continental shelf or the operations of an installation under its jurisdiction, or its right to establish conditions for cables or pipelines entering its territory or territorial sea.

ANNEX A

Highly Migratory Species

1. Albacore Tuna
2. Bluefin Tuna
3. Bigeye Tuna
4. Skipjack Tuna
5. Yellowfin Tuna
6. Pomfrets
7. Marlin
8. Sailfish
9. Swordfish
10. Sauries
11. Dolphin (fish)
12. Cetaceans (whales and porpoises)

ALTERNATIVE TEXTS OF DRAFT ARTICLES ON SETTLEMENT OF DISPUTES

AUSTRALIA, BELGIUM, BOLIVIA, COLOMBIA, EL SALVADOR, LUXEMBOURG, NETHERLANDS, SINGAPORE AND UNITED STATES OF AMERICA: WORKING PAPER ON THE SETTLEMENT OF LAW OF THE SEA DISPUTES

The representatives of a number of countries have held informal consultations on issues connected with the settlement of disputes which may arise under the Law of the Sea Convention. This working paper, resulting from those discussions, is presented as a possible framework for further discussions at the next session of the Conference. It sets out various possible alternatives, together with notes indicating relevant precedents.[6] The paper does not necessarily reflect the proposals of individual Governments, and does not in any way preclude any sponsoring delegation from presenting later its own proposals on the subject.

Where only one text appears under a particular heading, this does not necessarily imply that there are no other opinions concerning that question or that all delegations which have participated in the informal consultations agree on the necessity for such a provision.

1. *Obligation to settle disputes under the Convention by peaceful means*

Alternative A

The Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention through the peaceful means indicated in Article 33 of the Charter of the United Nations.

Alternative B

[Having regard to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,] the Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention by peaceful means in conformity with the Charter of the United Nations.

2. *Settlement of disputes by means chosen by the parties*

Alternative A

If any dispute arises between two or more Contracting Parties relating to the interpretation or

[6] The notes indicating relevant precedents which were included in the working paper (U.N. doc. A/CONF.62/L.7, Aug. 27) are not printed here.

application of this Convention, those Parties shall consult together with a view to the settlement of the dispute by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, recourse to special procedures provided for by an international or regional organization, or other peaceful means of their own choice.

Alternative B

The parties to the dispute may agree to settle the dispute by any peaceful means of their own choice, including negotiation, mediation, inquiry, conciliation, arbitration, judicial settlement, or recourse to special procedures provided for by an international or regional organization.

8. *Clause relating to other obligations*[7]

Alternative A

If the parties to a dispute [agree to resort to a procedure entailing a binding decision or] have accepted, through a general, regional, or special agreement, or some other instruments, an obligation to resort to arbitration or judicial settlement, any party to the dispute shall be entitled to refer it to [such procedure or to] arbitration or judicial settlement in accordance with that agreement or instruments in place of the procedures specified in this Convention.

Alternative B

The provisions of this Convention relating to dispute settlement shall not apply to a dispute with respect to which the parties are bound by an agreement, or other instruments, obliging them to submit that dispute to another procedure entailing a binding decision.

Alternative C

Notwithstanding the provisions of any agreement or other instruments in force between them, the Contracting Parties shall, unless they otherwise agree, apply the procedures laid down in this Convention to any dispute relating to its interpretation or application.

4. *Clause relating to settlement procedures not entailing a binding decision*

Alternative A

Where a Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention has submitted that dispute to a dispute settlement procedure not entailing a binding decision, the other party or parties to the dispute may at any time refer it to a dispute settlement procedure provided for by this Convention, unless the parties have agreed otherwise.

Alternative B

Notwithstanding any agreement to refer a dispute to a procedure not entailing a binding decision, any Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention, which is required by this Convention to be submitted on the application of one of the parties to a dispute settlement procedure entailing a binding decision, may refer the dispute at any time to that procedure.

Alternative C

The right to refer a dispute to the settlement procedure provided for by this Convention for obtaining a binding decision may be exercised only after the expiration of the time-limit established by the parties in an agreement to resort to a dispute settlement procedure which does not entail a binding decision, or, in the absence of such a time-limit, if, [within a period of — months] [within a reasonable time, taking into account all the relevant circumstances] that procedure has not been applied or has not resulted in a settlement of the dispute.

5. *Obligation to resort to a means of settlement resulting in a binding decision*

Alternative A.1

Any dispute which may arise between two or more Contracting Parties regarding the interpretation or application of this Convention shall be submitted to arbitration at the request of one of the parties to the dispute.

Alternative A.2

Any dispute between two or more Parties to this Convention concerning the interpretation or application of this Convention shall, if settlement by negotiation between the Parties involved has not been possible, and if these Parties do not otherwise agree, be submitted upon request of any of them to arbitration as set out in annex . . . to this Convention.

Alternative B.1

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention shall be submitted, at the request of any of the parties to the dispute, to the Law of the Sea Tribunal to be established in accordance with the annexed statute.

Alternative B.2

Notwithstanding the submission of a dispute to a

[7] A special provision may be needed when parties to a dispute are subject to the jurisdiction of the International Court of Justice as well as Parties to this Convention.

procedure not entailing a binding decision, any Contracting Party which is party to a dispute relating to the interpretation or application of this Convention, which is required by this Convention to be submitted on the application of one of the parties to a dispute settlement procedure entailing a binding decision, may refer the dispute at any time to the Law of the Sea Tribunal.

Alternative C.1

Any dispute arising between Contracting Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to the dispute.

Alternative C.2

Any dispute arising between Contracting Parties concerning the interpretation or application of this Convention shall be referred by application of any party to the dispute to a chamber to be established in accordance with the Statute of the International Court of Justice to deal with the Law of the Sea disputes.

Alternative D

Subject to the provisions of this Chapter, any party to a dispute relating to the interpretation or application of this Convention shall be entitled to refer such dispute at any time to [the dispute settlement procedures entailing a binding decision which are provided for in this Convention] [arbitration] [the tribunal established under this Convention] [the International Court of Justice].

6. *The relationship between general and functional approaches*

Alternative A.1

When a party to a dispute objects to a decision arrived at through a specialized dispute settlement procedure[8] provided for in this Convention, that party, may have recourse to the dispute settlement procedure entailing a binding decision provided for in this chapter on any of the following grounds:

(a) lack of jurisdiction;
(b) infringement of basic procedural rules;
(c) misuse of powers; or
(d) violation of the Convention.

Alternative A.2

Whenever this Convention provides for a specialized procedure, without allowing further recourse to the dispute settlement procedure entailing a binding decision, this chapter shall not apply.

Alternative B.1

1. Before resorting to the dispute settlement procedure entailing a binding decision provided for in this chapter, the parties to any dispute relating to chapters — of this Convention [e.g., those relating to fishing, pollution, or scientific research] may agree to refer it to a special fact-finding procedure in accordance with the provisions of annex —.

2. In any procedure entailing a binding decision under this chapter, the findings of fact made by the fact-finding machinery shall be considered conclusive [unless one of the parties presents positive proof that a gross error has been committed].

or

2. Should the findings of fact made by the fact-finding machinery be challenged by a recourse to the dispute settlement procedure provided for in this chapter, the party challenging such facts shall bear the burden of proof.

Alternative B.2

1. At the request of any party to a dispute relating to chapters — of this Convention [e.g., those relating to fishing, pollution or scientific research], the dispute shall be referred to a special fact-finding procedure in accordance with the provisions in annex —.

2. If any party to the dispute considers that the fact-finding decision is not in accordance with the provisions of this Convention, it may appeal to the dispute settlement procedure provided for in this chapter.

Alternative C.1

1. The Law of the Sea Tribunal, to be established in accordance with the annexed statute shall establish special chambers to deal with disputes relating to chapters — of this convention. Each chamber of the Tribunal shall be assisted in the consideration of a dispute by four technical assessors sitting with it throughout all the stages of the proceedings, but without the right to vote. These assessors shall be chosen by each chamber from the list of qualified persons prepared pursuant to the statute of the Tribunal. [Their opinion on scientific and technical questions shall be considered by the chamber as conclusive.]

2. Each chamber shall deal with the dispute in accordance with the special procedure prescribed for that chamber by the statute of the Tribunal, taking into account the special requirements of each category of cases.

Alternative C.2

1. When a dispute submitted to the Law of the Sea Tribunal involves scientific or technical questions, the Tribunal shall refer such matters to a

[8] It is envisaged that provisions relating to special procedures which may be required in such functional fields as fishing, sea-bed, marine pollution, scientific research, will be set out either in a separate part of the dispute settlement chapter or within the chapter to which they relate.

special committee of experts chosen from the list of qualified persons prepared in accordance with the statute of the Tribunal.

2. If the dispute is not settled on the basis of the committee's opinion, either party to the dispute may request that the Tribunal proceed to consider the other aspects of the dispute, taking into consideration the findings of the committee and all other pertinent information.

7. *Parties to a dispute*

Alternative A

1. The dispute settlement machinery shall be open to the States parties to this Convention.

2. The conditions under which the machinery shall be open to other States, international intergovernmental organizations, [non-governmental international organizations having a consultative relationship with the United Nations or a specialized agency of the United Nations or any other international organization], and natural and juridical persons shall be laid down [by . . .] [in an annex to this Convention], but in no case shall such conditions place the parties in position of inequality.

Alternative B

The dispute settlement machinery shall be open to the States parties to this Convention [and to the Authority, subject to the provisions of article . . .].

8. *Local remedies*

Alternative A

A Contracting Party which has taken measures alleged to be contrary to this Convention shall not be entitled to object to a request for submission of dispute to the dispute settlement procedure under this chapter solely on the ground that any remedies under its domestic law have not been exhausted.

Alternative B.1

The Contracting Parties shall not be entitled to submit a dispute to the dispute settlement procedure under this chapter, if local remedies have not been previously exhausted, as required by international law.

Alternative B.2

1. In the case of a dispute relating to the exercise by the coastal State of its enforcement jurisdiction in accordance with this Convention, the occasion [subject matter] of which, according to the domestic law of the coastal State, falls within the competence of its judicial or administrative authorities, the coastal State shall be entitled to request that the submission of the dispute to the means of dispute settlement provided for in this chapter be delayed until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party to the dispute which desires to resort to the procedure for dispute settlement provided for in this chapter may not submit the dispute to such procedure after the expiration of a period of one year from the date of the aforementioned decision.

[3. When the case has been submitted to the settlement procedure under this chapter, the party challenging the findings of fact by the judicial authorities of the coastal States shall bear the burden of proof.]

9. *Advisory jurisdiction*

If a court of a Contracting Party has been authorized by the domestic law of that Party to request the Law of the Sea Tribunal to give an advisory opinion [a ruling] on any question relating to the interpretation or application of this Convention, the Law of the Sea Tribunal may [shall] give such an opinion [ruling].

10. *Law applicable*

Alternative A

In any dispute submitted to it the dispute settlement machinery shall apply the law of this Convention, and shall ensure that this law is observed in the interpretation and application of this Convention.

Alternative B

In any dispute submitted to it, the dispute settlement machinery shall apply, in the first place, the law of this Convention. If, however, the dispute relates to the interpretation or application of a regional arrangement or public or private agreement concluded pursuant to this Convention, or to regulations adopted by a competent international organization, the dispute settlement machinery shall apply, in addition to the Convention, the rules contained in such arrangements, agreements, or regulations, provided the regulations are not inconsistent with this Convention.

Alternative C

Any dispute submitted to the dispute settlement procedure established by this convention shall be decided in accordance with applicable international law.

Alternative D

In any dispute submitted to it, the dispute settlement machinery shall apply:

(a) the provisions of this Convention;

(b) the rules and regulations laid down by the competent international authority;

(c) the terms and conditions of the relevant contracts or other legal arrangements entered into by the competent international authority.

10A. *Equity jurisdiction*

The provisions of this chapter shall not prejudice the right of the parties to a dispute to agree that the dispute be settled *ex aequo et bono*.

11. *Exceptions and reservations to the dispute settlement provisions*

Alternative A

The provisions of this chapter shall apply to all disputes relating to the interpretation and application of this Convention.

Alternative B.1

The dispute settlement machinery shall have no jurisdiction to render binding decisions with respect to the following categories of disputes:

(a) Disputes arising out of the normal exercise of regulatory or enforcement jurisdiction, except when gross or persistent violation of this Convention or abuse of power is alleged.[9]

(b) Disputes concerning sea boundary delimitations between States.

(c) Disputes involving historic bays or limits of territorial sea.

(d) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law.

(e) Disputes concerning military activities [, unless the State conducting such activities gives its express consent].

(f) . . . .

(g) . . . .

Alternative B.2

The dispute settlement machinery shall have no jurisdiction with respect to the following categories of disputes:

(a) Disputes arising out of the normal exercise of discretion by a coastal State pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power.[9]

(b) Disputes concerning sea boundary delimitations between adjacent and opposite States, including those involving historic bays and the delimitation of the adjacent territorial sea.

(c) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law.

(d) Disputes concerning military activities [, unless the State conducting such activities gives its express consent.]

(e) . . . .

(f) . . . .

Alternative C.1

1. In ratifying this Convention, acceding to it, or accepting it, a State may declare that it does not accept the jurisdiction of the dispute settlement machinery to render binding decisions with respect to one or more of the following categories of disputes:

(a) Disputes arising out of the normal exercise of regulatory or enforcement jurisdiction, except when gross or persistent violation of this Convention or abuse of power is alleged.[10]

(b) Disputes concerning sea boundary delimitations between States.

(c) Disputes involving historic bays or limits of territorial sea.

(d) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law.

(e) Disputes concerning military activities [, unless the State conducting such activities gives its express consent].

(f) . . . .

(g) . . . .

2. If one of the Contracting Parties has made such a declaration, any other Contracting Party may enforce the same exception in regard to the Party which made the declaration.

Alternative C.2

1. In ratifying this Convention, acceding to it, or accepting it, a State may declare that it does not accept the jurisdiction of the dispute settlement machinery with respect to one or more of the following categories of disputes:

(a) Disputes arising out of the normal exercise of discretion by a coastal State pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power.[10]

(b) Disputes concerning sea boundary delimitations between adjacent and opposite States, including those involving historic bays and the delimitation of the adjacent territorial sea.

(c) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law.

(d) Disputes concerning military activities [, unless the State conducting such activities gives its express consent.]

(e) . . . .

(f) . . . .

2. If one of the Contracting Parties has made such a declaration, any other Contracting Party may enforce the same exception in regard to the Party which made the declaration.

[9] The precise drafting and implications of this exception will require further examination in the light of the substantive provisions of this Convention.

[10] The precise drafting and implications of this reservation will require further examination in the light of the substantive provisions of this Convention.

Ambassador Stevenson Reviews Work of Law of the Sea Conference

Statement by John R. Stevenson [1]

This is the first of a series of reports I will be making in the next few weeks, including reports to the President and to committees of the House and Senate, about the results of this session of the Law of the Sea Conference. I want to emphasize at the outset that while the results obviously are not all we hoped for, neither is there any cause for billing the conference a failure.

I said in my first press conference here on June 20 that "great issues, involving the interests of so many states, are obviously not easily resolved." This is not to say that they cannot and will not be resolved within the time framework originally scheduled by the United Nations. That time framework for completion of a treaty in 1975 is, as you know, of substantive importance in this negotiation. Not only the United States but many other countries are under domestic political pressures to take legislative action which would have the effect of foreclosing many avenues of negotiation which have opened up this session.

What we are attempting to do here is to establish the goals of our international society for a large part of the world for the foreseeable future. This would not be easy were we able to foresee all the factual circumstances of man's future in the seas. It is more difficult when in large measure we must act on imperfect knowledge and in reliance on our general experience that a system of legal order is a preferable approach to peaceful accommodation in the seas.

Perhaps a most significant result of this session, and one not to be underestimated, has been the agreement of almost all nations represented here that the interests of all will be best served by an acceptable and timely treaty. To that end, the conference has scheduled not only the next session in the spring in Geneva but a return to Caracas for the signing of the agreement in the expectation that this will take place in accordance with the U.N. timetable.

Other accomplishments of the session are considerable. Among the most important are the following:

a. The vast array of law of the sea issues and proposals within the mandate of Committee II dealing with territorial sea, straits, and the economic zone was organized by the committee into a comprehensive set of informal working papers reflecting main trends on each precise issue. A large number of formal proposals were introduced as a basis for insertions in these main trends papers. All states can now focus on each issue, and the alternative solutions, with relative ease. A similar development occurred with respect to marine scientific research.

b. The transition from a Seabed Committee of about 90 to a conference of almost 150 was achieved without major new stumbling blocks and with a minimum of delay.

c. The overwhelming majority clearly de-

[1] Issued at a news conference held at Caracas on Aug. 28 at the conclusion of the Caracas session of the Third U.N. Conference on the Law of the Sea (text from press release 353 dated Sept. 3). Ambassador Stevenson is Special Representative of the President for the Law of the Sea Conference and chairman of the U.S. delegation to the conference.

sires a treaty in the near future. Agreement on the rules of procedure is clear evidence of this desire to achieve a widely acceptable treaty. The tone of the meeting was moderate and serious. The conference adopted a recommended 1975 work schedule deliberately devised to stimulate agreement.

d. The inclusion in the treaty of a 12-mile territorial sea and a 200-mile economic zone was all but formally agreed, subject of course to acceptable resolution of other issues, including straits. Accordingly, expanded coastal state jurisdiction over living and nonliving resources appears assured.

e. With respect to the deep seabeds, the first steps have been taken into real negotiation of the basic questions of the system of exploitation and the conditions of exploitation.

f. Traditional regional and political alignments of states are being replaced by informal groups whose membership is based on similarities of interest on a particular issue. This has greatly facilitated rationalization of issues and is necessary for finding effective accommodations.

g. The number and tempo of private meetings has increased considerably and moved beyond formal positions. This is essential to a successful negotiation.

With few exceptions, the conference papers now make it clear what the structure and general content of the treaty will be. The alternatives to choose from and the blanks to be filled in, and even the relative importance attached to different issues, are all known.

What was missing in Caracas was the political will to negotiate, and the main reason for this was the conviction that this would not be the last session. The next step, as I said in my plenary speech, is for governments to make the political decisions necessary to resolve a small number of critical issues. In short, we must now move from the technical drafting and negotiating stage at this session, which has laid bare both the outlines of agreement and the details of disagreement, to the political level which makes compromise possible.

Each state here, depending upon its situation and circumstances, has a different idea of the relative importance of different issues and how the blanks should be filled in. The United States and some others have stated that it is essential to preserve unimpeded passage of straits and the general rights of navigation, in which all countries which trade with the rest of the world have a vital interest. There are differences as to the balance of coastal state rights and duties within an economic zone. There are differences as to how the problem of pollution within the zone should be handled and how scientific research can be conducted in a fashion that will not hinder research but will also recognize the interests of states in activities near their coasts. There are differences as to how and by whom the deep seabed should be exploited.

What we have done, I believe, is to lay all these problems on the table in the form of concrete alternative treaty texts, so that representatives of governments can go home and provide their governments with the information and the assessments that will permit them to decide what accommodations will best serve our common purpose. My delegation expects to arrive in Geneva willing to negotiate on all the remaining troublesome aspects of this treaty in the hope and in the spirit that other governments will be prepared to do likewise.

I have every confidence that the necessary decisions will be made and that most states will come to Geneva ready to conclude a treaty. Factual assessments can be made by computers. Judgments of the future, informed judgments on the best course for peace and stability of the world, must be made by men and governments in good faith and a spirit of compromise.

The United States has, I think, demonstrated that good faith and the willingness to accommodate the interests of others. There is much work to be done, but I look forward to returning to this hospitable city to sign the Treaty of Caracas next year.

Department Reports to Congress on Law of the Sea Conference and Discusses Legislation on 200-Mile Fisheries Jurisdiction

Following are statements presented to the Senate Committee on Foreign Relations on September 5 by Carlyle E. Maw, Under Secretary for Security Assistance; John R. Stevenson, Special Representative of the President and chairman of the U.S. delegation to the Third U.N. Conference on the Law of the Sea; and John Norton Moore, Deputy Special Representative of the President and deputy chairman of the delegation.[1]

STATEMENT BY UNDER SECRETARY MAW

I appreciate the opportunity to appear before this committee to testify on S. 1988. The Department of State attaches great importance to the successful conclusion of a comprehensive oceans law treaty, and we are concerned that unilateral action at this time would seriously damage the chances for agreement.

S. 1988, as amended, has major implications for the foreign relations of the nation. The administration strongly supports the effort to conclude a timely oceans law treaty within the Third U.N. Conference on the Law of the Sea. It is in the interest of all nations that such a comprehensive treaty be concluded.

The great potential of the world's oceans can only be fully realized with the stability which accompanies broadly based agreement on their legal regime. And without such an agreement, their great potential for peaceful development may be overshadowed by the potential for conflict.

It is particularly important that during the final stages of the Law of the Sea Conference all nations should refrain from new ocean claims which could irreparably damage the delicate fabric of the negotiation. Passage of S. 1988 or similar legislation unilaterally extending the fisheries jurisdiction of the United States would be seriously damaging to the negotiations as well as more broadly to the overall oceans and foreign relations interests of the United States. We strongly oppose the passage of this or similar legislation at this time.

Mr. Chairman, Ambassador John R. Stevenson, the Special Representative of the President for the Law of the Sea Conference, will report on the progress made at the Caracas session of the Third U.N. Conference on the Law of the Sea. Professor John Norton Moore, the Chairman of the National Security Council Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President, will then give the executive branch views on S. 1988.

STATEMENT BY AMBASSADOR STEVENSON

I welcome this opportunity to appear before the Senate Foreign Relations Committee to report on the progress made at the first substantive session of the Third U.N. Conference on the Law of the Sea, held in Caracas, Venezuela, from June 20 to August 29, 1974.

Before proceeding with this report, I would like to say how much we appreciated the at-

[1] The complete transcript of the hearings will be published by the committee and will be available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

tendance at the conference of three members of this committee, Senators Clifford Case, Edmund Muskie, and Claiborne Pell, as well as members of their and the committee's staffs. We are deeply grateful for their willingness to attend the conference and for the advice and assistance that they and other members of the committee have given to our efforts to achieve an agreed constitution and supporting legal regime for two-thirds of this planet. It has been and will remain a fundamental part of our policy to work closely with the Congress and this committee to achieve a law of the sea treaty that fully protects the basic interests of the United States.

Accomplishments of Caracas Session

I want to emphasize at the outset that, while the results of the Caracas session were not all we hoped for, the session was not a failure.

A most significant result was the apparent agreement of most nations represented there that the interests of all will be best served by an acceptable and timely treaty.

To that end, the conference has scheduled not only the next session in the spring in Geneva but a return to Caracas for the signing of this agreement in the expectation that this will take place in accordance with the U.N. timetable. That timetable provides for conclusion of the treaty in 1975.

Further evidence of this desire to achieve promptly a widely acceptable treaty was reflected in the adoption by consensus of the rules of procedure early in the session. These rules make several changes in normal procedures that are designed to promote widespread agreement.

The tone of the general debate and the informal meetings was moderate and serious and reflected wide agreement on the broad outlines of a comprehensive general agreement.

Finally, I am sure the members of the Senate who were with us will agree that the delegates from all regions worked hard. Three or four simultaneous meetings were common, and there were some night sessions. The number of papers worked on was enormous, but this time the object—largely achieved—was organizing and reducing the alternatives, not proliferating them.

Other accomplishments of the session were considerable. Among the most important are the following:

a. The vast array of critical law of the sea issues and proposals within the mandate of Committee II—including, among others, the territorial sea, economic zone, straits, fisheries, and the continental margin—was organized by the committee into a comprehensive set of working papers containing precise treaty texts reflecting main trends on each precise issue. All states can now focus on each issue, and the alternative solutions, with relative ease.

A similar development occurred with respect to marine scientific research in Committee III. Committee I, dealing with the novel subject of a legal regime for exploiting the deep seabed, had previously agreed to alternative treaty texts in the preparatory committee and further refined these texts at the Caracas session.

b. The transition from a preparatory committee of about 90 to a conference of almost 150, including many newly independent states, was achieved without major new stumbling blocks and with a minimum of delay.

c. The inclusion in the treaty of a 12-mile territorial sea and a 200-mile economic zone was all but formally agreed, subject of course to acceptable resolution of other issues, including unimpeded transit of straits. Accordingly, expanded coastal state jurisdiction over living and nonliving resources appears assured as part of the comprehensive treaty.

d. With respect to the deep seabeds, the first steps have been taken into real negotiation of the basic questions of the system of exploitation and the conditions of exploitation.

e. Traditional regional and political alignments of states are being replaced by informal groups whose membership is based on similarities of interest on a particular issue.

This has greatly facilitated clarification of issues and is necessary for finding effective accommodations.

f. The number and tempo of private meetings has increased considerably and moved beyond formal positions. This is essential to a successful negotiation. Of course, by their very nature, the results of such meetings cannot be discussed publicly.

With few exceptions, the conference papers now make it clear what the structure and general content of the treaty will be. The alternatives to choose from and the blanks to be filled in, and even the relative importance attached to different issues, are well known.

Accommodation on Critical Issues Required

What was missing in Caracas was sufficient political will to make hard negotiating choices. A principal reason for this was the conviction that this would not be the last session. The absence prior to the completion of this session of organized alternate treaty texts on many issues also inhibited such decisionmaking.

The next step is for governments to make the political decisions necessary to resolve a small number of critical issues. In short, we must now move from the technical drafting and preliminary exploratory exchanges of views at this just-completed session, which has laid bare both the outlines of agreement and the details of disagreement, to the highest political levels, involving heads of states themselves, to make accommodation on these critical issues possible.

The fundamental problem is that most states believe the major decisions must be put together in a single package. Every state has different priorities, and agreement on one issue is frequently conditioned on agreement on another. Thus it might have been possible—and might have been helpful to the executive branch in its efforts here today—to adopt a general declaration of principles in Caracas endorsing, among other things, a 12-mile territorial sea and a 200-mile economic zone.

Our delegation opposed such an idea because it would have diverted us from negotiating the key details of an economic zone that can spell the difference between true agreement and the mere appearance of agreement and because our willingness to support such concepts is also conditioned on satisfactory resolution of other issues, including unimpeded passage of straits. In choosing to concentrate on precise texts and alternatives, our delegation believed we were in fact best promoting widespread agreement on schedule. However, we recognized that the absence of tangible symbols of agreement would place us in a politically difficult situation between sessions.

In his closing statement before the Caracas session, the President of the conference, recognizing the problem, stated, "we should restrain ourselves in the face of the temptation to take unilateral action," and then urged states to prepare to reach agreement "without delay" since governments cannot be expected to exercise "infinite patience."

We regret that for a variety of reasons the conference was unable to capitalize upon the initial prevailing good will to produce a final treaty at the Caracas session. Nevertheless the political parameters of an overall agreement were made much clearer at Caracas, and we are at the stage where differences in approaches are embodied in specific treaty articles expressed as alternative formulations on almost all the major issues.

Rights and Duties in the Economic Zone

On July 11 at a plenary session, we noted there was a growing consensus on the limits of national jurisdiction, which we expressed in the following terms: [2]

> A maximum outer limit of 12 miles for the territorial sea and of 200 miles for the economic zone . . . conditional on a satisfactory overall treaty package and, more specifically, on provisions for unimpeded transit of international straits and a balance between coastal state rights and duties within the economic zone.

To promote negotiations on the essential

[2] For a statement by Ambassador Stevenson made on July 11, see BULLETIN of Aug. 5, 1974, p. 232.

balance of coastal state rights and duties the United States submitted draft articles proposing the establishment of a 200-mile economic zone in the treaty. The U.S. draft articles consist of three sections: the economic zone, fishing, and the continental shelf.

The economic zone section provides for a 200-mile outer limit with coastal state sovereign and exclusive rights over resources, exclusive rights over drilling and economic installations, and other rights and duties regarding scientific research and pollution to be specified. There would be coastal state environmental duties with respect to installations and seabed activities. All states would enjoy freedom of navigation and other rights recognized by international law within the economic zone.

The fishing section gives the coastal state exclusive rights for the purpose of regulating fishing in the 200-mile economic zone subject to a duty to conserve, and to insure full utilization of, fishery stocks taking into account environmental and economic factors.

In substance, there is no significant difference between the objectives of S. 1988 and the U.S. proposal at the conference. Fishing for anadromous species such as salmon beyond the 12-mile territorial sea would be prohibited except as authorized by the host state. Highly migratory species such as tuna would be regulated by the coastal state in the zone and by the flag state outside the zone, in both cases in accordance with regulations established by appropriate international or regional organizations. Membership in the organization would be mandatory, and the coastal state would receive reasonable fees for the highly migratory fish caught in its zone by foreign vessels. The international organization, in establishing equitable allocation regulations, would be obligated to insure full utilization of the resource and to take into account the special interests of the coastal states within whose economic zones highly migratory fish are caught.

The continental shelf section provides for coastal state sovereign rights over exploration and exploitation of continental shelf resources. The continental shelf is defined as extending to the limit of the economic zone or beyond to a precisely defined outer limit of the continental margin.

The coastal state would have a duty to respect the integrity of foreign investment on the shelf and to make payments from mineral resource exploitation for international community purposes, particularly for the economic benefit of developing countries. In our plenary statement we suggested that these payments should be at a modest and uniform rate. The revenue-sharing area would begin seaward of 12 miles or 200 meters' water depth, whichever is further seaward.

The draft articles on the economic zone place the United States in the mainstream of the predominant trends in the conference, and we were pleased with the favorable reaction to our proposal.

We were disappointed, however, at the support, particularly among a number of African countries, for an economic zone in which there would be plenary coastal state jurisdiction not only over resources but over scientific research and vessel-source pollution as well and in all of these areas there would be no international standards except provisions for freedom of navigation and overflight and the right to lay submarine cables and pipelines. Many of the same countries are saying that if a pattern of unilateral action by individual countries emerges before a treaty is agreed they would go further and opt for a full 200-mile territorial sea.

We believe that specifying the rights and duties of both coastal states and other states in the economic zone is the approach best designed to avoid the sterile debate over abstract concepts.

At the final meeting of the Second Committee on August 28, the chairman, Ambassador Andres Aguilar of Venezuela, made a constructive and challenging statement summing up its work. On its own initiative, the committee decided to have the statement circulated as an official committee document. This occurred after initial opposition by the 200-mile territorial sea supporters, which was withdrawn in the face of other delega-

tions' willingness to proceed to a vote if necessary. Because of its great importance and the universal respect and admiration earned by Chairman Aguilar for his strong and effective leadership, I would like to quote briefly from that statement:

> No decision on substantive issues has been taken at this session, nor has a single article of the future convention been adopted, but the states represented here know perfectly well which are at this time the positions that enjoy support and which are the ones that have not managed to make any headway.
>
> The paper that sums up the main trends does not pronounce on the degree of support which each of them has enlisted at the preparatory meetings and the conference itself, but it is now easy for anyone who has followed our work closely to discern the outline of the future convention.
>
> So far each state has put forward in general terms the positions which would ideally satisfy its own range of interests in the seas and oceans. Once these positions are established, we have before us the opportunity of negotiation based on an objective and realistic evaluation of the relative strength of the different opinions.
>
> It is not my intention in this statement to present a complete picture of the situation as I see it personally, but I can offer some general evaluations and comments.
>
> The idea of a territorial sea of 12 miles and an exclusive economic zone beyond the territorial sea up to a total maximum distance of 200 miles is, at least at this time, the keystone of the compromise solution favored by the majority of the states participating in the conference, as is apparent from the general debate in the plenary meetings and the discussions held in our committee.
>
> Acceptance of this idea is, of course, dependent on the satisfactory solution of other issues, especially the issue of passage through straits used for international navigation, the outermost limit of the continental shelf and the actual retention of this concept, and, last but not least, the aspirations of the landlocked countries and of other countries which, for one reason or another, consider themselves geographically disadvantaged.
>
> There are, in addition, other problems to be studied and solved in connection with this idea; for example, those relating to archipelagoes and the regime of islands in general.
>
> It is also necessary to go further into the matter of the nature and characteristics of the concept of the exclusive economic zone, a subject on which important differences of opinion still persist.
>
> On all these subjects substantial progress has been made which lays the foundations for negotiation during the intersessional period and at the next session of the conference.

Mr. Chairman, perhaps the most marked differences between the position of the United States and that of a majority of other states at the conference emerged in the First Committee, which deals principally with the mining of manganese nodules in the deep seabed for the production of nickel, copper, cobalt, and perhaps certain other metals. The basic differences relate to who will exploit the deep seabed resources and how this exploitation will take place.

The United States took the position that access to the resources should be guaranteed on a nondiscriminatory basis under reasonable conditions that provide the security of expectations needed to attract the investment for development of the resources. This would generate international revenues to be used for international community purposes, particularly for developing countries. A number of developing countries have supported a concept under which the international seabed authority would itself undertake exploration and exploitation and which, under the new formula introduced by the developing countries at Caracas, would in addition have discretion to contract with states and private companies to operate under its direct and effective control and under basic conditions of exploitation set forth in the convention itself.

During the last few weeks of the conference real negotiations began on the basic conditions for exploitation when the First Committee agreed to establish a small informal negotiating group. This group will resume its work at the next session of the conference, and we hope that negotiations in this context and during the intersessional period will lead to a narrowing of differences and a realistic approach that will promote access by industrialized consumer countries and the development of the mineral resources of the deep seabeds.

The differences between what we call regulation and what others call control may be narrowed if we can agree on the conditions of exploitation, including measures to insure that exploitation on a nondiscriminatory ba-

sis will take place, and if agreement can be reached on protecting relevant interests in the decisionmaking process.

Marine Environment and Scientific Research

In the Third Committee of the conference, there were mixed results on formulating treaty texts for protection of the marine environment and oceanographic scientific research.

We were pleased that texts concerning the preservation of the marine environment were prepared on several points, including basic obligations, particular obligations, global and regional cooperation, and technical assistance. But basic political issues remain to be resolved on the jurisdiction of port and coastal states with respect to vessel-source pollution and on whether there will be different obligations for states depending upon their stage of economic development—the so-called double standard.

We believe that the Caracas session broadened the basis of understanding of the complex problems involved in drafting new legal obligations to protect the marine environment, and there were indications that all states were analyzing their environmental policies in detail.

On the scientific research issue, the various proposals were reduced to four principal alternatives regarding scientific research within the areas of national jurisdiction. Some states advocated a regime requiring coastal state consent for all research. Others supported a modified consent regime. The United States supported a regime which places obligations on the state conducting the research to notify the coastal state, provide for its participation, and insure sharing of the data and assistance in interpreting such data. Other states proposed complete freedom of scientific research.

We were encouraged by the fact that for the first time states appeared to be moving toward serious negotiations on this subject, including serious consideration of our proposal.

Provisions for Settlement of Disputes

Mr. Chairman, we know there will be disputes with respect to the interpretation and application of the provisions of the treaty. The willingness of the United States and many others to agree to a particular balance of the rights and duties of states and the international authority is predicated upon reasonable confidence that the balance will be fairly maintained. Accordingly, the establishment of an impartial system of peaceful and compulsory third-party dispute settlement is critical.

We were encouraged to find at the Caracas session that there were states from all regional groups that support the need for comprehensive dispute-settlement provisions. At the end of the session, the United States cosponsored, with eight other states from different regions, a working paper containing alternative texts of draft treaty articles. This document was prepared, and is in general supported, by a broader informal group chaired by the Representatives of Australia and El Salvador, for which Professor Louis Sohn of the Harvard Law School served as rapporteur. We hope this document will facilitate the drafting of treaty articles on this important element of the convention.

With your permission, Mr. Chairman, I will submit for the record a copy of the report transmitted by the delegation to the Secretary of State on August 30 and copies of all draft articles sponsored or cosponsored by the United States. The consolidated treaty texts in Committee II and other documents will be transmitted to the committee as soon as we receive them from the U.N. Secretariat.

Mr. Chairman, it is my firm conviction that a comprehensive treaty is obtainable by the end of 1975 as contemplated in last year's U.N. General Assembly resolution. To do so, however, governments must begin serious negotiation the first day at Geneva; and to prepare for that, they must during the intersessional period appraise the alternatives, meet informally to explore possible

accommodations that go beyond stated positions, and supply their delegates with instructions that permit a successful negotiation.

A multilateral convention of unparalleled complexity affecting some of our nation's most vital economic and strategic interests is within our reach. We cannot and will not sign just any treaty, but in my judgment we would be terribly remiss in our responsibilities to the United States and to the international community as a whole if we were now to overlook broader and longer range perspectives.

In the year ahead we intend to work diligently and carefully for a convention that will protect our interests in the broadest sense of that term. In this endeavor, Mr. Chairman, we trust that we shall have the guidance and support of the Congress and of your committee.

Through our mutual cooperative efforts I am certain that we can take the necessary steps and develop constructive initiatives so that all will agree that the United States has done all it could to foster a successful outcome of the Third U.N. Conference on the Law of the Sea on schedule in 1975.

STATEMENT BY MR. MOORE

It is a particular pleasure to appear before this committee to testify for the executive branch on two bills of fundamental importance to U.S. oceans policy. Both bills raise questions deeply affecting the foreign relations of the nation as well as our fisheries and other oceans interests. They also pose a stark choice for our policy toward an area covering more than two-thirds of the surface of the earth. Is U.S. oceans policy to be pursued through cooperative efforts at international agreement? Or is it to be pursued through unilateral national measures risking an irreversible pattern of conflicting national claims?

In testifying on these bills, I am appreciative of the outstanding service the sponsors of this legislation have continually rendered to the nation in fishery and other ocean matters. I am also appreciative of the very real problems confronting coastal and anadromous species off our coasts. This increased pressure is part of a global trend which in the absence of an adequate international legal framework for fisheries jurisdiction has in many areas led to overexploitation. The depletion of the haddock stock off our Atlantic coast is an example.

The principal problem in the present pattern of international fisheries jurisdiction is that management jurisdiction does not generally coincide with the range of the stocks. As such, any effort at sound management and conservation confronts the classic "common pool problem" similar to that experienced in the early days of the east Texas oilfields; that is, in the absence of agreement, it is not in the interest of any producer acting alone to conserve the resource. The solution to this common pool problem in fisheries is broadly based international agreement providing coastal states with management jurisdiction over coastal and anadromous species with highly migratory species managed by appropriate regional or international organizations.

For the first time in the history of oceans law it is realistic to expect such a broadly based agreement covering fisheries jurisdiction. After lengthy preparatory work in the U.N. Seabed Committee, the Third U.N. Conference on the Law of the Sea has recently completed its first substantive session, held in Caracas, Venezuela from June 20 to August 29. If other issues are satisfactorily resolved, the conference offers every promise of solving the coastal and anadromous fisheries problems which prompted the bills before this committee.

The strong trend in the conference is for acceptance of a 200-mile economic zone providing coastal states with jurisdiction over coastal fisheries in a 200-mile area off their coasts. There is also considerable support for host state control of anadromous species throughout their migratory range and grow-

ing support for special provisions on international and regional management of highly migratory species. In this connection the U.S. delegation has indicated that we can accept and, indeed, would welcome the 200-mile economic zone as part of a satisfactory overall treaty which also protects our other oceans interests, including unimpeded transit of straits used for international navigation.

It is also realistic to expect a broadly based oceans treaty in the near future. The General Assembly resolution which established the Law of the Sea Conference provided that any subsequent session or sessions necessary after the Caracas session would be held no later than 1975. Pursuant to this schedule, the Caracas session of the conference agreed on a second session to be held in Geneva from March 17 to May 3–10, 1975. It also agreed that the formal signing session will take place in Caracas, with July and August 1975 discussed in this regard. We believe that it is important to adhere to this conference schedule.

Preventing Further Depletion of Fisheries

Even on this schedule, it is of course also important that we prevent further depletion of our coastal and anadromous stocks before the new law of the sea treaty comes into force. We are taking several important steps to meet this need:

—First, we are actively pursuing bilateral and limited multilateral approaches for the protection of our stocks. Progress has been significant in recent months, and we intend to continue to vigorously pursue improved protection bilaterally and within regional fisheries commissions.

For the information of the committee the administration is preparing and will shortly submit for the record a report on the present condition of our coastal and anadromous stocks and efforts to provide increased interim protection to those stocks. I am accompanied by the Honorable Howard Pollock, Deputy Administrator of the National Oceanic and Atmospheric Administration, Department of Commerce, and Mr. William Sullivan, Acting Coordinator of Ocean Affairs, Department of State, who are prepared to answer questions on these and future efforts to protect our coastal and anadromous stocks in the interim period before a new law of the sea treaty is applied.

—Second, we have proposed that the fisheries as well as certain other provisions of the new law of the sea treaty should be applied on a provisional basis; that is, they should be applied after signature of the new treaty but before waiting for the process of ratification to bring the treaty into full legal effect. Provisional application is a recognized concept of international law, and our proposal was favorably received. We will of course consult closely with the Congress as to how provisional application is to be effectuated.

—Third, we are today announcing a significant new measure to provide increased protection for our stocks until the new law of the sea treaty can be fully applied; that is, new enforcement procedures to substantially tighten control over the incidental catch of living resources from the U.S. continental shelf. In addition, we are carefully reviewing the availability of means to make possible increased Coast Guard enforcement efforts to protect our coastal and anadromous species in particularly vulnerable areas.

Attached is a letter to Senator Magnuson setting out the new enforcement measures for tighter control over incidental catches of U.S. continental shelf resources.[3] Because of their potentially severe impact on foreign nations fishing over our continental shelf, these far-reaching new measures will go into effect only after a 90-day grace period to enable affected nations to adjust their fishing methods or to conclude agreements further protecting our living resources. We are today notifying affected states of these new measures.

These new procedures will provide sub-

[3] Not printed here.

stantial increased protection to our valuable living resources. We believe that they are entirely justified by existing international law and that jurisdiction over the living resources of the continental shelf carries with it the right to require other states to enter into agreements for the protection of such resources if they are taken during fishing for non-shelf stocks as well as if the taking of such shelf resources is intentional.

An expanded enforcement effort by the Coast Guard would also help insure compliance with existing regulations and assist in the transition from the present limited fisheries jurisdiction to the broader jurisdiction which is the likely outcome of a successful Law of the Sea Conference.

Difficulties of Proposed Legislation

Despite the interim problem in protection of our coastal and anadromous stocks, the executive branch is strongly opposed to the enactment of legislation such as S. 1988, which would unilaterally extend U.S. fisheries jurisdiction.

Enactment of this legislation would not satisfactorily resolve our fisheries problems, would at most merely anticipate a result likely to emerge in a matter of months from a successful Law of the Sea Conference, and would be seriously harmful to U.S. oceans and foreign relations interests in at least five principal ways:

—First, unilateral action extending national jurisdiction in the oceans is harmful to overall U.S. oceans interests, and as such we have consistently protested any extension of fisheries or other jurisdiction beyond recognized limits.

A unilateral extension of jurisdiction for one purpose will not always be met by a similar extension but, rather, may encourage broader claims which could have serious implications; for example, with respect to our energy needs in transportation of hydrocarbons, our defense and national security interests in the unimpeded movement of vessels and aircraft on the world's oceans, or our interest in the protection of marine scientific research rights in the oceans.

Because of our broad range of oceans interests and our leadership role in the world, an example of unilateral action by the United States would have a particularly severe impact upon the international community which could quickly lead to a crazy quilt of uncontrolled national claims. Indeed, it was the threat of just such a result, with its open-ended invitation to conflicts and pressures on vital U.S. interests, that led to a decision in two prior administrations at the highest level of government that U.S. oceans interests and the stability of the world community would best be served by a broadly supported international agreement. This administration strongly agrees with that judgment. Soundings from our Embassies and at the Caracas session of the Law of the Sea Conference indicate that the possibility of unilateral claims by others is not merely an abstract concern should this legislation pass.

—Second, enactment of legislation such as S. 1988 could be seriously damaging to important foreign policy objectives of the United States.

Unilateral extension of our fisheries jurisdiction could place the nation in a confrontation with the Soviet Union, Japan, and other distant-water fishing nations fishing off our coasts. These nations strongly maintain the right to fish in high seas areas and are unlikely to acquiesce in unilateral claims, particularly during the course of sensitive law of the sea negotiations in which they have substantial interests at stake. The implications for détente and our relations with Japan are evident. In fact, both the Soviet Union and Japan have already expressed serious concern over this legislation to our principal negotiators at the Law of the Sea Conference.

Similarly, unilateral extension of our fisheries jurisdiction coupled with reliance on the Fishermen's Protective Act to protect threatened distant-water fishing interests of the United States seems certain to assure continuation of disputes with Ecuador and Peru

as well as to generate new disputes with other coastal states off whose coasts our nationals fish.

It is strongly in the national interest to encourage cooperative solutions to oceans problems rather than a pattern of competing national claims. A widely agreed comprehensive law of the sea treaty will promote development of ocean uses and will reduce the chances of ocean disputes leading to conflict among nations. If these interests seem too theoretical we might recall the recent "cod war" between the United Kingdom and Iceland, which resulted from a more modest Icelandic claim of a 50-mile contiguous fisheries zone.

—Third, a unilateral extension of our fisheries jurisdiction beyond 12 miles would not be compatible with existing international law, and particularly with the Convention on the High Seas, to which the United States and 54 other nations are party.

The United States has consistently protested any extension of fisheries jurisdiction beyond 12 miles as a violation of international law. And the International Court of Justice held only last month in two cases arising from the "cod war" that the 50-mile unilateral extension of fisheries jurisdiction by Iceland was not consistent with the rights of the United Kingdom and the Federal Republic of Germany.

Mr. Chairman, what would we do if this bill were to become law and another country brought us before the International Court of Justice? Would we invoke our reservation and maintain that issues relating to the use of the seas up to 200 miles from our coast, or even hundreds of miles beyond this in the case of salmon, are exclusively within our domestic jurisdiction? Or would we respond on the merits and risk losing what we are certain to get from a widely accepted law of the sea treaty?

Violation of our international legal obligations by encroaching on existing high seas freedoms can be seriously detrimental to a variety of oceans interests dependent on maintenance of shared community freedoms in the high seas. The appropriate way to change these obligations in order to deal with new circumstances is by agreement. It is particularly inappropriate to argue that a unilateral act contrary to these obligations is required by such circumstances when a widely supported agreement that resolves the problem is nearing completion. As this committee knows, violation of our international legal obligations can have the most serious short- and long-run costs to the nation.

—Fourth, a unilateral extension of our fisheries jurisdiction would pose serious risks for our fisheries interests.

Protection of our coastal and anadromous stocks can only be achieved with the agreement of the states participating in the harvesting of those stocks. Unilateral action not only fails to achieve such agreement, but it may also endanger existing fishery agreements and efforts to resolve the problem on a more lasting basis with such countries. Similarly, protection of our interests in fishing for highly migratory species such as tuna or coastal species such as shrimp where U.S. nationals may fish off the coasts of other nations can only be achieved through cooperative solutions.

In short, we cannot expect to achieve acquiescence from states fishing off our coast, and we will harden the positions of other countries off whose coasts we fish. The resolution of old disputes will be made more difficult, and their costs to our fishermen and our government will continue. At the same time we will face new disputes off our own coast and elsewhere.

S. 1988 or other similar legislation unilaterally extending U.S. fisheries jurisdiction would provide others with an opportunity to make unilateral claims damaging to our distant-water fishing interests despite any exceptions for highly migratory species or provisions for full utilization written into the legislation. If the United States can make a unilateral claim eliminating the freedom to fish on the high seas, it is difficult to assert that other nations are bound by the excep-

tions and provisions contained in our own legislation. Moreover, even by its terms S. 1988 would include highly migratory species in the extension of coastal state jurisdiction where such species "are not managed pursuant to bilateral or multilateral fishery agreements." We should keep in mind that the principal countries with which we have disputes concerning jurisdiction over highly migratory species are not now parties to agreements relating to the management of such stocks.

A unilateral extension of fisheries jurisdiction by the United States could also make it more difficult to achieve meaningful guarantees such as those we are advocating at the Law of the Sea Conference binding on all nations for the conservation of the living resources of the oceans. Moreover, it could make more difficult acceptance of a rational basis for fisheries management; that is, jurisdiction over anadromous species in the host state and jurisdiction over highly migratory species in a regional or international organization. As such, legislation such as S. 1988, although intended to protect our fish stocks, could, paradoxically, have the opposite effect not only on stocks off our coast but on fish stocks the world over.

—Finally, passage at this time of legislation such as S. 1988 unilaterally extending the fisheries jurisdiction of the United States would seriously undercut the efforts of all nations to achieve a comprehensive oceans law treaty.

Our nation has urged particular care and restraint in avoiding new oceans claims during the course of the Third U.N. Conference on the Law of the Sea. A pattern of escalating unilateral claims during the conference could destroy the delicate fabric of this most promising and difficult negotiation. It could also undermine the essential political compromise by which all nations would agree on a single package treaty. And by unilaterally taking action which we have said must be dependent on a satisfactory overall compromise, it could harm other U.S. oceans interests such as protection of vital navigational freedoms, marine scientific research, environmental goals, or economic interests such as a regime for deep seabed mining which will promote secure access to the minerals of the deep seabed area.

Mr. Chairman, these principal difficulties with legislation such as S. 1988 are in no sense alleviated by its emergency or interim nature. Section 11(b) of S. 1988 provides that the act would expire on such date as the Law of the Sea Treaty comes into force or is provisionally applied. Unfortunately, however, in the interim period the legislation would be simply a unilateral extension, with all of the associated costs of unilateralism and with none of the benefits of a lasting solution. Moreover, this legislation could well prevent the agreement which is expected to supercede it.

In commenting on S. 1988 I have sought only to deal with the fundamental issue of unilateral extension of U.S. fisheries jurisdiction, which is the central feature of this bill. The executive branch has not at this time taken a position on the fisheries management aspects of the bill.

Similarly, I have not sought to discuss the specifics of S. 3783 which, because it is intended to be rooted in the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, is potentially not as objectionable as S. 1988. The principal problem with S. 3783, of course, is that the most important nations fishing for our coastal and anadromous species, including the Soviet Union and Japan, are not parties to the 1958 convention.

With appropriate changes, it is possible that S. 3783 or a similar measure rooted in existing international law could be a useful alternative to S. 1988 without the grave impact on our overall oceans and foreign relations interests. Accordingly, before commenting further on S. 3783, the executive branch would welcome an opportunity for further study with the Congress with a view to examining the possibility of changes which might make S. 3783 acceptable.

Cooperative Solutions Required

Mr. Chairman, this committee, the Congress, and the nation are faced with a fundamental choice. Are we to pursue cooperative efforts at solution to our oceans problems even when the going is rough and the pace slower than we would like? Or are we to pursue unilateral policies destined to lead to escalating conflict in the oceans?

The overall oceans interests of our nation, our foreign relations interests, compliance with our international legal obligations, our fisheries interests themselves, and our interest in concluding a timely and successful law of the sea treaty all strongly require that we firmly set our course toward cooperative solutions.

In any event, I am particularly heartened that this fundamental choice is being examined by this committee and trust that on this issue, as on all others, it will bring its understanding and experience to bear on the short- and long-range implications of this choice for the foreign relations of the nation.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1974 594-230/9

DEPARTMENT OF STATE PUBLICATION 8794
International Organization and Conference Series 116

Released November 1974

Office of Media Services
Bureau of Public Affairs

Approved For Release 2006/03/17 : CIA-RDP80B01495R000800140001-8

DEPARTMENT OF STATE, U.S.A.
WASHINGTON, D.C. 20520

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